United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

463

No. 21,934

LANGSTON HUGHES, *et al.*,

Appellants

v.

PENNSYLVANIA RAILROAD COMPANY,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LANGSTON HUGHES, a minor, by
MRS. GERTRUDE HUGHES, his parent
and next friend,
3709 Grant Street, N.E.
Washington, D.C.

and

MRS. GERTRUDE HUGHES, individually,
3709 Grant Street, N.E.
Washington, D. C.

Plaintiffs,

v.

Civil Action
No. 3014-'64

PENNSYLVANIA RAILROAD COMPANY,
A Corporation
Pennsylvania Building
13th and Pennyslvania Avenue, N.W.
Washington, D. C.

Defendant

Docket Entries

1964

December 8 - Complaint, appearance & demand for jury trial.

December 8 - Summons copies (1) and copies (1) of Complaint issued Ser 12-9-64.

December 22 - Answer of deft. to complt; c/m 12-21-64. App. Paul F. McArdle, filed.

December 22 - Calendared (N) N/AC.

1965

February 18 - Answer of defendant to interrogatories, c/m 2-17-65, filed.

February 19 - Interrogatories of defendant to plaintiff; c/m 2-18-65, filed.

March 16 - Answer of pltff to interrogatories; c/m 3-15-65, filed.

June 25 - Notice of plaintiff to take oral deposition of Henry S. Ruby and Charles G. Stallwitz; c/m 6-24-65, filed.

August 30 - Motion of plaintiffs for production of documents, Exhibit A, P&A; c/m 8-27-65, MC, filed.

September 10 - Withdrawal by plaintiff of motion for production; c/m 9/9/65, filed.

October 5 - Called. Assistant Pretrial Examiner.

October 7 - Deposition of Henry S. Ruby and Charles G. Stallwitz, filed.

1966

March 7 - First Notice under Rule 13.

March 22 - Deposition of Langston H. Hughes; 3-5-66; $56.40 paid by deft., filed.

March 23 - Consent Order staying Rule 13 until July 1, 1966 (N) Sirica, J.

August 19 - Notice to pltffs. to take deposition of Harold Owens; c/m 8-19-66, filed.

October 5 - Notice to pltffs. of taking deposition of G. H. Alban and G. O. Tate; c/m 10-4-66, filed.

October 7 - Deposition of Harold Kenneth Owens by pltffs. Sept. 23, 1966, ($60.00) filed.

October 31 - Certificate of readiness by pltffs; c/m 10-29-66, filed.

November 4 - Deposition of Garvin A. Tate, a witness, 10-21-66, ($62.50) filed.

1968

February 15 - Pretrial Proceedings. Pretrial Examiner

February 26 - List of witnesses by pltffs. c/m 2/23/68, filed.

March 21 - Supplemental list of witnesses by plaintiff, c/m 3/20/68, filed.

April 3 - Order certifying cause to the D.C. Court of General Sessions for trial. (N) AC/N. McManus, J.

April 5 - Motion of pltffs for reconsideration and revocation of order certifying case to Court of General Sessions, filed.

April 10 - Points and Authorities in opposition to motion of platff. for reconsideration and revocation of Order certify to D.C. Court of General Sessions; c/m 4/10/68. M.C., filed.

April 10 - Motion of plaintiffs for reconsideration and revocation of order certifying case to D.C. Court of General Sessions, Denied.

(FIAT) (N) McManus, J.

April 11 - Memorandum of pltff in rebuttal of deft's memorandum of P&A in opposition to motion for reconsideration and revocation of order certifying case to Court of General Sessions: c/m 4-11-68.

April 15 - Notice of Appeal of pltff; Deposit by Friedman $5,00: Notice mailed to Paul F. McArdle, filed.

[Filed December 8, 1964]

COMPLAINT

(Assault and Battery; False Arrest
and False Imprisonment; Wilful Injury)

1. The amount in controversy herein exceeds Ten Thousand ($10,000) Dollars, exclusive of interest and costs, and is within the exclusive jurisdiction of this Court.

COUNT I

2. On or about September 21, 1964, the minor plaintiff, a boy of fourteen (14) years of age, was crossing the railroad tracks of defendant in the vicinity of Kenilworth Avenue and Grant Street, in Northeast Washington, on a path frequented by the public for such purpose. While so engaged, said plaintiff was attacked from the rear and thrown to the ground, without cause, justification or warning, by Henry S. Ruby, a brakeman regularly employed by defendant, who had descended from a freight train moving along said tracks, on which he was then working. Thereafter, Ruby and another employee of defendant who also descended from the train, whose name is unknown to plaintiffs, beat and kicked the minor plaintiff with great force and violence on the head and body, causing severe cuts, bruises, lacerations, and bleeding.

3. Following said beating, Ruby and his fellow-worker forced the minor plaintiff to board the freight train from which they had descended, and took him against his will to a nearby office of defendant. At said office, plaintiff was forcibly and unlawfully confined and detained, and questioned by Charles G. Stallwitz, a railroad policeman employed by defendant and by Ruby. Following said detention and confinement, the minor plaintiff was forcibly taken by Stall-

witz to No. 14 Precinct Police Station of the District of Columbia, where he was released upon the appearance at said Station of his mother, the adult plaintiff herein, without charges or further action against him.

4. Said beating and the detention and confinement of the minor plaintiff by defendant through its agents, servants, and employees, were wrongful and unlawful and without cause or justification; and were inflicted and caused wilfully, wantonly and maliciously by said defendant through its agents, servants, and employees in the course of and pursuant to their employment. As a result the minor plaintiff suffered severe and permanent injuries, great pain and suffering, humiliation, and hurt, all to his damage in the sum of One Hundred Thousand ($100,000) Dollars.

COUNT II

5. The adult plaintiff adopts the allegations of Count I as though set forth in full herein.

6. As a result of the wrongful injuries, pain and suffering, inflicted upon the minor plaintiff, by defendant's agents, servants and employees, as aforesaid, the adult plaintiff has been and will be required to expend for medical and other expenses the sum of One Thousand Five Hundred ($1,500) Dollars.

WHEREFORE, the premises considered, the minor plaintiff demands judgment against defendant in the sum of One Hundred Thousand ($100,000) Dollars, as compensatory damages, and in the sum of One Million ($1,000,000) Dollars, as punitive damages; and the adult plaintiff demands judgment against defendant in the sum of One Thousand Five Hundred ($1,500) Dollars, as compensatory damages,

and in the sum of Fifty Thousand ($50,000) Dollars, as punitive damages; plus interest and costs of this suit.

/s/ Irving L. Chasen
Chasen & Levine

/s/ Seymour Friedman

Attorneys for Plaintiffs

JURY DEMAND

The plaintiffs demand a jury trial of all issues in this cause.

[Filed December 22, 1964]

ANSWER OF DEFENDANT

COUNT I

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

1. Defendant neither admits nor denies the jurisdiction of this Court.

2. Defendant denies each and every allegation set forth in Paragraph 2 of Count I of the complaint.

3. Defendant denies each and every allegation of the first two sentences of Paragraph 3 of Count I of the complaint. Defendant denies that the minor plaintiff was forcibly taken by defendant's agents, servants or employees to the No. 14 Precinct Station of the District of Columbia. Defendant is without knowledge or informa-

tion sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3 of Count I of the complaint.

4. Defendant denies each and every allegation of the first sentence of Paragraph 4 of Count I of the complaint. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of said paragraph.

5. Defendant denies that the minor plaintiff is entitled to judgment in the amount of $100,000 or in any amount whatsoever.

Third Defense

Any actions taken by the defendant or any of its agents, servants or employees thereof in connection with the allegations relating to the plaintiff's arrest, detention, assault and confinement, were reasonable and justified under the circumstances giving rise thereto.

COUNT II

1. Defendant adopts and makes a part hereof the First, Second and Third Defenses of Count I of its answer.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of Count II of the complaint.

3. Defendant denies that the minor plaintiff is entitled to judgment in the amount of $100,000 as compensatory damages, or in any amount whatsoever; denies that the minor plaintiff is entitled to judgment in the amount of $1,000,000 as punitive damages, or in any amount whatsoever; denies that the adult plaintiff is entitled to judgment in the amount of $1,500 as compensatory damages, or in any amount whatsoever; and denies that the adult plaintiff is entitled to

judgment in the amount of $50,000 as punitive damages, or in any amount whatsoever.

Paul F. McArdle
Attorney for Defendant

[Certificate of Service]

[Filed January 30, 1965]

INTERROGATORIES PROPOUNDED BY PLAINTIFFS

* * *

5. (a) Prior to institution of the instant case, were you given any reports or advised in any way of an incident or incidents on September 21, 1964 at about 7:30 to 8:00 P.M. involving the minor plaintiff, Langston Hughes, and any of the persons named in 2 (b), 2 (d), and 3 (b) above?

(b) If "yes":

(1) Were such reports given or were you so advised orally or in writing, or both?

(2) Name each person from whom such reports or advice was given to you, and describe in detail the nature and substance of the report or advice, when such report or advice was given, and, if not already named, give the business and home addresses of all persons so reporting, and the nature of the employment or other relationship between such person and your company.

(3) With respect to any written reports or advices referred to in (b) (2) above, describe the date, description or other identification of said writings, their present location and custodian, and name of the persons to and by whom said writings were addressed or sent.

* * *

[Filed February 18, 1965]

DEFENDANT'S ANSWERS TO INTERROGATORIES

* * *

5. (a) Yes.

(b) (1) Both.

(2) G. O. Tate orally reported the fact that Langston Hughes threw rocks and/or stones at the train to the defendant Yardmasters Office located at 225 33d Street, S.E., Washington, D.C. C. G. Stallwitz made an oral report of the fact that Langston Hughes had been throwing rocks and/or stones at the engine and took Langston Hughes to the local precinct station. Mr. Stallwitz made an oral report to his superiors. Mr. Stallwitz's business address is the same as listed in 2 (b) above and his home address is 206 Trenton Place, S.E., Washington, D.C. Written reports were prepared from the oral reports of Messrs. Tate and Stallwitz.

(3) Mr. Tate did not make any written report of this incident. Written reports relating to the stoning of the engine were obtained from each member of the train crew listed above. Such reports are in the possession of the attorney for the defendant.

* * *

[Filed February 15, 1968]

PRETRIAL PROCEEDINGS

STATEMENT OF NATURE OF CASE: Action for damages for assault and battery; false arrest and false imprisonment; wilful injury.

The claims of the Plaintiffs as to the occurrence, the injuries and damages suffered by the Ps are set out in the statement which is attached hereto, made a part hereof, incorporated herein by reference marked "A".

* * *

DEFENDANT ASSERTS that at the time complained of, on property owned by this D, the P, Langston Hughes, and another boy were throwing stones and/or other objects at a moving engine owned and operated by this D. The stones and/or other objects struck and broke the window of the engine. Immediately thereafter, three members of the train crew took the P, Langston Hughes, into custody. The crew members in turn had a policeman employed by this D take Langston Hughes to the precinct where a complaint was filed.

D denies each and every allegation of assault, battery, false arrest and false imprisonment. D further denies that the actions of its employees were wilful, wanton and malicious and further denies that the actions of such employees were wrongful, unlawful and without cause or justification.

D asserts that any actions taken by its employees in connection with the allegations relating to the arrest, detention, assault and confinement of P, Langston Hughes, were reasonable and justified in view of the actions of the P, Langston Hughes, in throwing stones and/or other objects at the engine. D alleges that at the time of the incident P, Langston Hughes, was a trespasser on property owned by this D.

STIPULATIONS

Witnesses known to D: G. H. Alban, H. S. Ruby, G. O. Tate and C. G. Stallwitz.

The parties agree to file with the Clerk of the Court and to mutually exchange, on or before Feb. 26, 1968, a list of the names and addresses of any witnesses known to them, other than those listed herein, including medical and expert witnesses who have knowledge of any aspect of this case, indicating those who may be used at the trial. Impeachment witnesses are not to be included.

The following may be admitted in evidence without formal proof, subject to all legal objections: photographs initialed by Examiner; x-ray plates; hospital records re minor P.

No permanent injuries will be claimed by Ps.

The Examiner has requested counsel to appear at trial with the maximum amount of authority to settle this case which will be allowed them by their principals.

/s/
Pretrial Examiner

/s/ Seymour Friedman
Esq., Atty. for Ps

/s/ Paul F. McArdle
Esq., Atty. for D

Occurrence:

On or about September 21, 1964, the minor plaintiff, a boy of fourteen (14) years of age, was crossing the railroad tracks of defendant in the vicinity of Kenilworth Avenue and Grant Street, in Northeast Washington, on a path frequented by the public for such purpose. While so engaged, said plaintiff was attacked from the rear and thrown to the ground, without cause, justification or warning, by Henry S. Ruby, a brakeman regularly employed by defendant, who had descended from the train, beat and kicked the minor plaintiff with great force and violence on the head and body, causing severe cuts, bruises, lacerations, and bleeding.

Following said beating, Ruby and his fellow-worker forced the minor plaintiff to board the freight train from which they had descended, and took him against his will to a nearby office of defendant. At said office, plaintiff was forcibly and unlawfully confined and detained, and questioned by Charles G. Stallwitz, a railroad policeman employed by defendant, and by Ruby. Following said detention and confinement, the minor plaintiff was forcibly taken by Stallwitz to No. 14 Precinct Police Station of the District of Columbia, where he was released upon the appearance of said Station of his mother, the adult plaintiff herein, without charges or further action against him.

Said beating, arrest, and the detention and confinement of the minor plaintiff by defendant through its agents, servants, and employees, were wrongful and unlawful and without cause or justification; and were inflicted and caused wilfully, wantonly and maliciously by said defendant through its agents, servants, and employees in the course of and pursuant to their employment.

Injuries to Minor Plaintiff:

1. Multiple Abrasions of the forehead.
2. Shock.
3. Linear fracture of skull.
4. Hemorrhage about right eye.
5. Mental pain and anguish.

Special Damages:

Plaintiff Gertrude Hughes seeks to recover for medical expenses and loss of services of the minor plaintiff as follows:

Casualty Hospital - $161.90

Plaintiffs also seek punitive damages over and against the defendant herein because of the maliciousness and wilfullness of the

acts of defendant by and through its agents, which maliciousness and wilfullness was known by the corporate defendant herein or should have been known, and which malicious and wilfull acts were ratified and approved by defendant herein.

[Excerpts from Deposition of Langston H. Hughes, Washington, D. C., March 5, 1966]

* * *

[3] LANGSTON H. HUGHES

* * *

EXAMINATION OF COUNSEL FOR DEFENDANT

BY MR. McARDLE:

* * *

Q. Do you remember the year you were born, the date and the year? A. Yes, sir.

Q. What is it? A. September 29, 1950.

* * *

[7] Q. Do you play any sports at school? A. Yes, sir.

Q. What do you play? A. I play basketball, football, baseball.

Q. All of the sports? A. Yes, sir.

Q. Are you a good athlete? A. Yes, sir.

* * *

[11] Q. Now, a complaint was filed against the Pennsylvania Railroad for an incident that occurred on September 21, 1964. A. Yes, sir.

* * *

Q. Now, in your own words I would like you to tell me exactly what happened that evening. A. Well, one day I was going to a store

to get some, you know, to get some candy and when I got over the bridge I was walking over across the track.

It was dark and I saw some other boys on the other side of the tracks. And I was on the other side, me and another boy named John Harvey.

And then I turned my head around — I saw a light and I turned my head around and then I turned back around and I asked him what was there.

And he was gone. He was running up the tracks. So I told him "Wait a minute". And then my — I was walking fast and this man came and jumped on me and started hitting me. And [12] I told him — I told him "Wait a minute".

And then another man came, a tall slim man. He came and stomped on me.

Q. "Stomped"? A. Yes, Sir. And then another man came and he started hitting on me, too. So after they finished beating me up they took me and put me on top of the train.

And they took me down to the station, to the train station. That's it.

Q. Now, this date is September 21, 1964, but what time was this, do you remember. A. Probably about 6:30.

Q. 6:30? A. Yes, sir.

* * *

[13] Q. Now, do you have to cross the tracks to get to the store? A. Yes, sir.

* * *

[14] Q. Was it dark out at that time, do you know? A. Yes, sir.

Q. Real dark? A. Yes, sir.

Q. It was? A. Yes, sir.

Q. Any lights in the area? Street lights? A. Yes, sir, it was street lights.

Q. Could you see another boy with these lights? A. You mean could I —

Q. In other words, were the lights bright enough to see other people? A. Well, I didn't see the man that was —

Q. No, no, I mean if you are looking at a person could you see them if they were, say, 15 feet away from you? A. Yes, sir.

Q. You could? A. Yes.

Q. In other words, if John Harvey were some 15 or 20 feet away from you you could recognize him.

Is that it? A. Yes, sir.

* * *

[20] Q. Now, had you crossed all the tracks? A. Yes, I crossed all the tracks.

Q. All right. Then you said you were walking fast? A. Yes, sir.

Q. And then what happened? A. And then a man jumped me. The railroad man jumped me [21] and started hitting on me.

Q. Jumped you? Did you see him? A. Yes, sir, I saw him. He had a white sweater shirt on.

Q. No, I mean before he jumped you. A. No, I didn't see him.

Q. Did he come up from the rear — A. Yes, sir.

Q. — of you? A. Yes, sir. He tackled me.

Q. He tackled you? A. Yes, sir.

Q. Around your — whereabouts on your body? A. Around my waist.

Q. Around your waist? A. Yes, sir.

Q. And did you fall? A. Yes, sir.

Q. After he tackled you you went down to the ground? A. Yes, sir.

Q. Do you remember what he was wearing? A. Yes, sir. He had a white sweater shirt on and a pair of bluejeans.

Q. Do you remember what you were wearing? [22] A. I had a blue Banlon shirt on and I think I had a pair of brown khaki pants on.

Q. Well, I doubt if you would remember but you think you had a blue shirt and khaki trousers on? A. Yes, sir.

Q. And this man had on a white — A. Sweatshirt.

* * *

[23] Q. You could — did the light help you to identify the man? A. Yes, sir — I, I don't know. I don't think I could recognize him again if I saw him.

Q. I see. All right. Now, and I think you said somebody stomped you — A. Yes, sir.

Q. — is that right? A. Yes, sir.

* * *

Q. Were you down on the ground then? A. Yes, sir.

Q. Now, what do you mean by "stomped me"? A. He was jumping up and down on me.

Q. But this was another man — A. Yes, sir.

Q. — am I right, a second man? A. Yes, sir.

Q. That first man who tackled you, did he land on you? A. He landed on me.

* * *

[24] Q. All right. Now, you said a second man stomped you which meant jumping up and down on you? A. Yes, sir.

Q. All right. Now, where was the first man when this second man was jumping up and down on you? A. He was still on me.

Q. Well, was the second man jumping up and down on the first man and yourself, you mean? A. No. See, the first man, he had me down on the ground. He was on top of me, holding me by my neck, and then the other man came and sort of jumping up and down on my legs, see. So he couldn't kick the other man.

[25] Q. And then how long did they jump up and down — did he jump up and down, the second man, do you remember? A. No, sir.

Q. And then you said a third man came? A. Yes, sir.

Q. And what did he do? A. He started beating on me, too.

Q. Excuse me, sir? A. He started beating on me.

Q. Were you still down? A. Yes, sir.

Q. And where did he hit you? A. He hit me in my face up beside my eye and one hit me in — he hit me in the back of my head.

Q. You mean the third man hit you in the back of your head? A. Yes, sir.

* * *

[26] Q. Well, was this second man still jumping up and down on your legs when the third man was hitting you — A. No, sir, he had stopped. I remember he stopped and he started calling me names.

Q. The second man did? A. Yes, sir.

Q. Did the first man ever say anything to you? A. Yes, he said something to me.

Q. Did the third man say anything to you? A. No.

Q. So just the first and second men? A. Yes, sir.

* * *

[28] Q. Did you see that train — after you came off the bridge did you see the train then? A. Yes, sir.

Q. Was it moving? A. It was moving real slow.

Q. All right. Now, as you came off the bridge was the train moving from your left? A. Yes, sir.

Q. It was? A. Yes, sir.

Q. It was going from your left to the right? A. Yes, sir.

Q. And did you still cross over the tracks in front of the train? A. Yes, sir.

* * *

[31] Q. Do you walk across these tracks frequently? A. Yes, sir, every day.

* * *

[33] Q. How long do you think it was, Mr. Hughes, that you were on the ground after you were tackled? A. How long?

Q. Yes. A. About two minutes.

* * *

[34] Q. And then they took you, as you said, into the — onto the engine of the train? A. Yes, sir.

* * *

[35] Q. Where did you go? A. Casualty Hospital.

* * *

Q. What did they do to you there, do you remember? A. Yes, sir. They gave me an x-ray.

* * *

Q. An x-ray? What else? A. And give a check-up; that's all.

Q. Where were you — were you hurt at all? A. Yes, sir.

[36] Q. Whereabouts? A. My leg were hurt.

Q. Your leg? A. Yes, sir.

Q. Any other things? A. Yes, sir. My eye.

Q. Excuse me, sir? A. My eye.

Q. Your eye was hurt? A. Yes, sir.

Q. You mean the — the main part of your eye? A. No, above the eye.

Q. Oh, above your eye? A. Yes, sir.

Q. Was that a cut, you mean? A. Yes, sir.

Q. Did you take care of that the night of September 21st, that is the night of the incident? Did you take care of that cut? A. You mean —

Q. When you got home that night — A. Yes, sir.

Q. — did you take care of it then? [37] A. Yes, sir.

Q. What did you do for it? A. I washed it off. I washed the blood off of it.

* * *

[Excerpts from Depositions of Henry S. Ruby and Charles G. Stallwitz, Washington, D. C., July 14, 1965.]

* * *

[3] HENRY S. RUBY

* * *

EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. FRIEDMAN:

* * *

[4] Q. What are your duties in your employment by Pennsylvania Railroad? A. My title is freight conductor, which consists of supervising the operation and movement of the train that I am in charge of.

Q. How long have you held that position? A. I was employed since June the 7th, 1956, promoted to conductor some time in 1958.

Q. Have you ever been a brakeman? A. Yes, sir.

Q. When was that? A. My job consists of both brakeman and conductor.

Q. Are the duties the same? A. No, sir. They are very similar, but they are not the same.

Q. What are the duties as brakeman? A. The duties of brakeman is to help, aid and assist the conductor in everything necessary for the prompt and safe movement of the train.

* * *

[12] Q. How about the book of rules? What would that deal with? A. The government of employees.

* * *

Q. Do the rules govern your conduct, other than in relation to the maintenance of the safety of the train? A. Yes, sir, that is correct.

[13] Q. It covers all your rules of conduct when on the property and operating the train; is that correct? A. When on and off the property, yes, sir, that is correct.

* * *

Q. Does it set up rules and conduct dealing with persons who are not employees? A. To some extent, yes, sir.

Q. Could you give me a typical rule of that type? A. There is a rule in the front of this book — I cannot recall it word for word — but it reads somewhat like this: Employees must unite to protect company property in case of fire, theft or any other irregularities.

* * *

[14] Q. Is that the whole rule? A. Is there a further explanation as to what is meant by that? A. I think it is plain enough.

Q. In what way are you supposed to unite and what action are you supposed to take? A. The book does not tell you that. You have to use your own discretion.

* * *

[15] Q. Does it have rules governing your conduct with respect to trespassers on property? A. It does, sir.

Q. What are the rules? Do you recall what the rule book provides with respect to trespassing? A. Yes, sir. It provides that you should request the [16] trespasser not to trespass on company property.

Q. Is that the extent of the rule? A. As I recall without looking in the book, yes, sir.

Q. Does it prescribe or suggest what should be done in the event they fail to accept your request or fail to follow your request? A. Yes, sir, I would say so.

Q. What do they tell you to do then? A. In the case of doubt or uncertainty, the safe course must be taken.

* * *

[17] Q. Suppose after requesting the trespasser to leave, he doesn't leave. Does the rule suggest or specify what your next step, if any, should be? A. My next step would be to report it to my superior.

Q. The first question was does the rule suggest what you do. A. I do not recall offhand. I presume it would: Report to your superior officer.

Q. When you are acting as a freight conductor on a train, who would your superior be? A. The superintendent of transportation.

* * *

Q. If you ran into a trespasser while you were acting as conductor and he rejected your request to leave, what are your instruc-

tions? A. I report it to my superior officer, to my superior.

Q. You mean you leave him trespassing until you get back [18] to where you can get hold of the superintendent? A. Yes, sir, that would be correct.

* * *

Q. When you are acting as a brakeman and you came across trespassers — suppose somebody was riding on a freight car who had no business there — you request them to leave? A. Yes, sir, that is correct.

Q. Those are your instructions, and if he refuses to leave, then what? A. That is what the railroad police are for.

Q. As a brakeman, you would go directly to the railroad police? A. As a brakeman, I would report it to my conductor. My conductor would then report it to his superior. His superior would then call the police department of the railroad. They in turn would take charge.

* * *

[19] Q. Then I understand you to say that in cases of trespssers, you do report directly to and call upon the railroad police? A. No, sir. I report it to my superior.

Q. After your superior has gotten in touch with the railroad police, then you will speak with the railroad police? You will not yourself call them directly? [20] A. If they feel it is necessary, they will speak to me. My job ends when I report it to my superior.

* * *

[22] Q. Was the movement of the train finishing, starting, or [23] at what point? What was the function of the movement of the train at the time of the meeting? Were you coming in from a trip or where were you? A. Yes, sir. We were proceeding in a south-

wardly direction approximately 10 miles an hour. 10 to 15 miles an hour.

* * *

Q. Were you making up a train or what? A. Shifting cars.

* * *

[24] Q. Let's fix the time. Do you recall approximately what time it was that you were in or near the Kenilworth yard just before your encounter with Mr. Hughes? A. Approximately 7:45 or so, or somewhere in there.

Q. Was it before dark or after dark? A. Just before it started to get dusk.

* * *

[27] Q. Could you read a newspaper outside without light? A. Yes, sir.

Q. Could you recognize someone across the street? A. Yes, sir.

* * *

[29] A. The locomotive was headed in a northerly direction. The control compartment was in the south portion of the engine.

Q. You say the train was heading south? A. That is correct.

Q. The locomotive was heading north? A. The locomotive position was in a northerly direction.

* * *

[30] Q. The south end as you have described it, the end of the locomotive which was at the south end of the train, that is, the direction in which the train was moving, is that all glass or is it open or how is that set up? A. The south portion of the engine when it is heading north consists of five glass picture windows.

Q. You and the engineer and the conductor were all looking through those windows or facing those windows? A. Yes, sir.

* * *

[32] Q. You were moving down about a quarter to eight, 7:45. You were moving south about 10 to 15 miles an hour. Then what occurred at that time? A. The conductor noticed two youths standing beside No. 1 track with rocks in their hands ready to throw when we approached. As he hollered,the youths threw ballast or rocks or some type of missile striking and breaking the windows of the locomotive and hitting on the frame and shell of the locomotive.

Q. You were riding south, I think you said, on No. 3 track? A. That's correct.

[33] Q. Is No. 1 track two tracks away? A. Two tracks away, yes, sir.

Q. There is 1 and then there is one in between, No. 2 and No. 3? A. Correct.

Q. Is No. 1 on the right-hand side or left-hand side of the train as you were moving? Was it on your right as you were facing south? A. No, sir.

Q. It was on your left? A. That's correct.

Q. What is the distance between track 1 and track 3, would you say? A. Approximately ten foot.

* * *

[34] Q. You said that the conductor hollered? Who hollered? A. The conductor.

Q. He saw two boys, two youths, standing on track 1? A. No, sir.

Q. What did he see? A. He seen two youths standing near No. 1 track.

Q. Near No. 1 track. Which side in relation to the train you were on? A. The left.

Q. Farther away from the train than No. 1? On the other side of track 1 from where you were or on the far side? A. In the vicinity of No. 1 track, yes, sir.

Q. Were they on the track? A. No, sir, they were not on the track.

[35] Q. They were on the near side, namely, near track 2, or on the far side? A. They were on the far side.

* * *

Q. Is there a path or anything like that there? A. It is not an authorized crossing, no, sir.

* * *

Q. Is it customary or usual that people walk down there? A. I imagine it is.

Q. To your knowledge. A. Yes, sir.

Q. Is there a fence which has to be climbed to get on to it or can you just walk on to it from the street? [36] A. You can walk on to it from the street. After crossing the tracks.

* * *

[37] A. I believe he said, "We are going to get stoned by those boys standing there with rocks in their hands." I believe he said, "Watch out for those boys. They are going to throw rocks. They have got rocks in their hands."

* * *

Q. The conductor merely said, "Watch out. They are going to throw rocks?" A. I believe he said, "They might stone the engine" as we went by.

Q. As a result of the conductor's call, what did you do? A. I looked to see the youths standing there with objects in their hands and which they threw and struck the engine.

* * *

[38] Q. You say there were two boys; is that right? A. That's correct.

* * *

Q. Each of them had their right hand back? A. I seen one boy with his hand cocked back. The other one was standing a little bit in back of him and I couldn't see too much what he was doing.

* * *

[40] Q. Could you tell us when you first saw these boys how [41] they were dressed? When you saw these two boys, how were the two of them dressed? A. One had a blue shirt on.

* * *

Q. Was he the boy in front or the boy in back as you have described? A. The boy in front.

Q. He was wearing a blue shirt? A. That's correct.

* * *

[42] Q. Incidentally, how were you dressed at the moment; do you recall? A. I don't recall. Yes, sir, I do. The specific clothing that I had on, I do not recall, other than they were dark. I had a dark jacket on and dark pants and shoes.

Q. Were you wearing a shirt under the jacket? A. Yes, sir, I was.

Q. White, blue, or what? A. I don't recall what it was, sir. I presume itwas one of my work shirts, which is dark in origin of color.

Q. Were you actually wearing your jacket or was your jacket off? A. No. My jacket was on.

* * *

[43] Q. You described earlier Mr. Tate's statement as he hollered. A. Yes, sir.

Q. Who did he holler at? A. Myself and Mr. Alban.

Q. What did he tell you to do as a result? He merely said, "They are getting ready to throw rocks at the train"? A. He thought possibly they would, yes, sir.

Q. And he shouted that at you? A. Yes, sir. He shouted, "Look out. They might stone us."

* * *

[44] Q. Were there any other people standing near the boys at the time? Do you recall that? A. No, sir, I don't recall if there was. I just recall seeing the two boys standing there, sir.

Q. Were there any other people walking along this path between the two tracks or that area between the two tracks that you remember? A. I did not see anybody.

Q. Then what happened? They threw the rocks? A. Yes, sir.

Q. You saw both of them throw? [45] A. I seen one boy actually throw the missile, which was the boy in the blue shirt.

Q. The other one, you don't know? A. The other boy, I could not say for sure whether he threw. What he had in his hand, I don't know. I presume he did because the engine was struck about four or five times.

Q. How many times did the boy in the blue shirt throw? A. I could only see him throw one.

Q. You don't know how many objects he threw that one time? A. No, sir, I do not.

Q. You didn't see the other boy throw at all? A. No, sir, I did not.

Q. How do you know that there were four or five times that the engine was hit? A. The glass was broken once, the body of the engine was hit three or four times, making a total of about four times the engine was struck.

Q. How do you know it was hit three or four times? A. Because I could hear it hitting the engine.

Q. That is what I am asking. Which pane of glass was broken? A. If I recall, it was the upper left-hand corner of the engine.

* * *

[46] Q. Let me see if I understand it. There are in the south end of the engine five windows? A. Yes, that is correct.

[47] Q. Behind those, there are other windows which are movable; is that correct? A. Yes, sir. That is correct.

Q. One of the stationary windows was the one that was broken? A. That is correct.

Q. The upper left-hand of the two?

* * *

Q. When the window was broken after the objects were [48] thrown, was anyone inside, any one of the three men whom you have described being there, hit by a missile or by glass or anything else? A. No one in the control compartment was hit by a missile. There may have been a spray of glass that got on the engineer. I don't recall.

Q. He didn't comment about it? A. Not that I can remember.

Q. What happened following that? A. I immediately opened the door, jumped down off the engine and proceeded to apprehend the boys.

Q. Which door? A. The door in the south part of the engine.

Q. Where is that located in relation to the windows as you have described them? A. In the middle.

* * *

[49] Q. You immediately opened that door, jumped off the train and apprehended the boys? Is that what you just said? A. I apprehended one boy, yes.

* * *

[50] Q. You apprehended one of the boys? A. That's correct.

Q. Which one? A. The boy in the blue shirt, which was Mr. Hughes.

Q. Where was he when you apprehended him? A. Standing in the same locality when I first seen him.

Q. Where was the other boy? A. In the same place.

Q. Why did you apprehend only one if they were both there? A. Because as I was alighting from the engine and started toward the boys, I got almost halfway to them when the boy in the rear turned and seen me. He dropped what looked like pieces of ballast from his hand and started to run across the B&O tracks. [51] The other boy didn't see me until I was approximately ten feet or so from him.

* * *

[52] Q. *** The one boy you say you saw throw the stones was doing what when you jumped off the train; just standing there? A. He was facing the train with ballast or rocks or something of that nature in his hand. When he seen the other boy was running, he looked to see why he was running and when he did, he seen me coming. The boy dropped the rocks and started to run.

Q. And? A. When he started to run, he turned and he sort of stumbled and fell and my momentum carried me into him.

Q. Were you standing when you were carried into him or did you fall on to him? A. I fell on to him, sir.

Q. Did you tackle him? A. No, sir, I did not. Would you clarify it when you say "tackle"?

[53] Q. You were the football player. A. I made a lunge for the boy.

Q. And fell on to him? A. I fell into him, yes, sir.

Q. And on? He was lying down at the moment you say he fell; is that correct? A. No, sir, that is not correct.

Q. Did he fall? A. Yes, sir, he did fall.

Q. And your momentum carried you into him? A. Yes, sir, that is correct.

Q. When he was lying down or when? A. No, sir. When he started to stumble.

Q. Did he fall or didn't he fall before you hit him? A. I did not hit him.

Q. Did you run into him? A. Yes, sir, I did.

Q. Had he fallen before or after you ran into him? A. Neither one. He was in the process of falling when my momentum carried me into him.

Q. Did he fall as a result of the combined momentum of yours and his own stumble? A. I presume so, yes, sir.

[54] Q. He did fall? A. Yes, sir.

Q. And you fell on top of him? A. Yes, sir.

* * *

[56] Q. What did Mr. Tate and Mr. Alban do when you jumped off the train; do you know? A. No, sir. I have no way of knowing.

Q. Neither of them got off the train? A. Yes, sir, they did.

Q. When? A. Presumably after the train had stopped.

Q. Both of them or just one of them? A. Both of them.

Q. To go back, you apprehended the one boy and the other had run away? A. That is correct.

Q. The boy you apprehended was Langston Hughes, as you later found out? A. That is correct.

Q. Approximately what time was this? 7:45, 7:50, or in that range; is that correct? A. Somewhere in that vicinity. Maybe 8 o'clock, or somewhere in there.

Q. After you fell on him, what did you do? A. The boy tried to get away. I put my hand behind his [57] belt and lifted him up. After

he was on his feet, he gave me no further resistance at all.

Q. What did he say? A. He told me to leave him alone, "You white mother fucker."

Q. What did you say? A. I said, "You are coming with me," and I believe he said, "I didn't throw those stones. The other boy did."

Q. Did you ask him whether he threw any stones? A. That wasn't necessary.

Q. I didn't ask you that. Did you say anything or ask him about throwing of stones? A. I asked him why he threw those stones and he first said that he didn't, and then when he was on the engine, he said that he didn't mean to hurt anybody and that he was a good boy and never been in trouble before and that he goes to church every Sunday, that he didn't know where No. 14 Precinct was.

Q. We are getting ahead of it a little bit. Let's get back.

You lifted him up by his belt? A. I assisted him up by his belt.

Q. Was he bleeding anywhere; do you know? A. I didn't notice at the time whether he was or whether he was not.

[58] Q. Did you notice later whether he was? A. Yes, sir, I did. He had an abrasion over one of his eyes. It did not look like it was cut. It looked like an abrasion from where he had hit the ground.

Q. That was the only thing you noticed? Was it bleeding? A. Not at the time that I recall, no, sir.

Q. You did notice later. How much later did you have occasion to notice that it was bleeding? A. Approximately 15 or 20 minutes later.

Q. When you were no longer standing at this site; is that correct? A. That's correct.

Q. You just stood there and waited after he was assisted up, is

that correct, and he talked as you have just described? A. That's correct.

Q. Did you start walking anywhere or going anywhere? A. Yes, sir. I started back to the engine.

Q. You started walking with him? A. That's correct.

Q. Holding on to his belt? A. That is correct.

Q. What was the purpose of that? A. The purpose of what, sir?

[59] Q. Of taking him with you. A. To notify my superior.

Q. Who was on the train? A. Who was on the train; and also to notify the company that I had apprehended the fellow that was throwing objects at the train.

Q. Are there any specific rules covering this situation in the rule book that you have described? A. Yes, sir, there is.

Q. What is the rule? A. In case of damage to or theft of company property, employees must unite to protect the same.

* * *

[61] Q. And then what did you do? A. We escorted him to the engine and placed him on the engine.

Q. Did you ask him whether or not he was going to go with you? A. No, sir, I did not.

Q. Were you holding him by his belt during this time? A. Yes, sir, I was.

* * *

[62] Q. Did Mr. Tate tell you not to take him on board the train or to the train, or did he tell you that you should, or what? A. No, sir, he didn't say. He said, "Let's take him down to the telephone and find out what to do with him."

Q. What telephone? A. The telephone which was located right there at the Deanwood cross-over.

Q. What? [63] A. Which is located right across from the Deanwood cross-over, which is right across from where the engine was stopped approximately. Mr. Tate called the yard master in charge, Mr. Harold Owens, who instructed him to bring him down and he would have the railroad police take care of it. The boy said that he had hurt his eye or his head, which looked red, so I reported this also.

* * *

Q. Mr. Tate walked with you and Alban and Langston Hughes, as you have described, down to the telephone which was about six car lengths away? A. That's right.

Q. While you waited there, he called someone? A. That's right.

Q. And then he came back and told you that he had called [64] Mr. Owens, the yard master? A. That is correct.

Q. And to take him on board the engine and take him down to the police, is that right? A. That is correct.

Q. The railroad police? A. That is correct.

Q. You did that? A. That is correct.

Q. You escorted him up the steps into the engine? A. That is correct.

Q. The three of you got on board and then what happened? A. We proceeded to the Benning Yard office.

Q. Where was Hughes at this time? Was he just standing in the cab? A. We seated him on the fireman's seat.

Q. Did you hold your hand in his belt at this time? A. No, sir, I did not.

Q. Did you hold his arm or any portion of his body? A. No, sir, I did not.

* * *

[65] Q. When you got there, what did you do? A. I turned him over to Mr. Stallwitz.

* * *

Q. Did you have conversation with him, who did, and tell me who said what. A. I don't recall everything that was said. I know I asked him why he threw them, why they threw the rocks, and at first he denied it and then he said that he didn't mean to hurt anybody. Then I pointed out that he could very easily hit someone in the head, which on various occasions has been done, and cause quite serious injury, and then he told me that he was a good boy and that he had never been in trouble before and it was the other boy that did all the throwing, and I asked Mr. Hughes if he knew the boy's name and he said, "No, sir, I don't," and I told him, I said, "Well, I think you are lying." He said, "No, sir, I don't know the boy's name." I said, "Well, all right. The [66] Pennsylvania Railroad Police will handle it from there."

* * *

Q. Other than as you have described Alban held his arm as you were walking to the telephone, did either Tate or Alban hold, strike, push, or otherwise touch Langston Hughes? A. No, sir.

* * *

Q. And your only contact with him was as you have described? A. That is correct.

Q. You didn't strike him or hit him in any other way? A. No, sir, I did not.

Q. To your knowledge, had any other incidents of this type occurred? A. Certainly.

Q. As a result of stones or ballast or missiles of some kind being thrown at engines in this area? A. Very definitely, sir.

Q. You mean this was a commonplace? [67] A. Yes, sir.

Q. Boys were constantly throwing stones at trains? A. Yes, sir.

Q. How long had it been going on? A. As long as I have been around the railroad.

Q. You mean at least nine years? A. Yes, sir.

* * *

Q. Have these incidents been reported to the railroad and the yard master, to your knowledge? A. Most of them have, yes, sir.

Q. Were they common knowledge and talk among the crews of the various trains that went by there? A. Yes, sir.

Q. What if any instructions have been requested or given regarding how to handle situations of that kind? A. None.

Q. None had ever been requested? A. No, sir.

[68] Q. To your knowledge, had any of the people involved requested that some protection be given? A. Yes, sir.

Q. Who? Who had requested protection? A. I don't recall offhand who specifically it was. I have reported many times that I have been stoned at different points on the railroad, especially there at Kenilworth Avenue.

Q. Who did you report it to? A. My superior.

Q. Who? A. It would be the conductor or the yard master in charge.

Q. What if anything were you told when you reported it? A. They will send a railroad police out.

Q. Were you told to get off the train or told not to get off the train? A. No, sir.

Q. Had you ever before gotten off the train? A. Yes, sir.

Q. Had you ever before apprehended someone who was guilty of these actions? A. Yes, sir.

Q. How long before? A. Possibly a year or so.

[69] Q. What did you do in that situation? A. Inform the proper authorities.

Q. Who? A. The yard master and in turn the Metropolitan Police Department.

Q. You did that yourself? A. No, sir, I did not.

Q. You informed the yard master? A. That is correct.

Q. In the same way as he was informed here? A. That is correct.

Q. When and where did this occur; at the same yard? A. No, sir. This happened at M Street.

Q. But a similar type of situation? A. Yes.

Q. In which you got off the train, apprehended a boy, was it, in that case, too? A. No, sir, I did not apprehend him. I chased the boy approximately two blocks to his home when he run in his house. Of course, I couldn't go into his house, so I walked back to the yard through the tunnel and informed them where the boy lived at. They in turn sent a police car over to the boy's house and apprehended him.

[70] Q. Do you remember the name of the boy? A. No, sir, I don't. I am sure if you want it, it would be in the record.

Q. That was about a year before this incident? A. I would say approximately.

Q. When you reported these various incidents and requested instructions as to how to handle it, which I take it you did — A. I did not request any instructions.

Q. — were you given any instructions? A. No, sir, I was not given any instructions.

Q. What was the purpose of the report? A. I don't understand you, sir.

Q. What was the purpose of reporting the incident if it wasn't designed to find out what could be done about it? A. I don't quite follow your line of thinking.

Q. I am asking a question. What was the purpose of reporting the incident? A. Because it is my job to report incidents like that.

Q. Of this type? A. That is correct.

Q. There was no occasion on which you asked what to do in a situation of this kind? A. No, sir. We have rules that cover these things.

[71] Q. What is the rule that covers this situation? How are you supposed to act? Are you supposed to attempt to apprehend? A. Our instructions are from our book of rules, which says employees must unite to protect company property in case of danger or theft of or damage to.

Q. Does it say that you are to attempt to apprehend them yourself? A. It does not say that. It says you will unite to protect company property, which means you will use any means reasonable to protect the property.

Q. The means are left to your discretion under the circumstances? A. I would say so, yes, sir.

Q. Previously you had run about two blocks, you say, to try to apprehend the boy who had done this? A. It was more like three or four blocks, sir.

Q. Three or four blocks. You reported that fact to the yard master? A. Yes, sir.

Q. Were you told at that time that in the event a similar situation arose, you should not attempt personally to apprehend the individual? A. No, sir.

[72] Q. In that case, you did go off railroad property? A. Yes, sir, that is correct.

Q. Were you told that you should attempt to apprehend, but only on railroad property, or no instruction whatever? A. No instruction whatever.

Q. Did the yard master approve what you had done in that case? A. Evidently it was. I never had to go to the office for any bawling out, as you would say, or be called on the carpet for it.

Q. You were never reprimanded or punished or fined or anything else? A. No, sir.

Q. You were not punished by loss of seniority or any similar type of action? A. No, sir.

Q. Was it reported to the brotherhood? A. No, sir.

Q. Would it normally be if there were disciplinary action involved? A. No, sir.

Q. There was no disciplinary action taken or attempted? A. No, sir.

* * *

[75] Q. When you got to the Benning Yard station, you did what? A. I assisted him off the engine so he wouldn't fall and turned him over to the railroad policeman, Mr. Stallwitz.

* * *

[78] Q. Mr. Stallwitz, as I understand it, met you there at the instruction of Mr. Owens, the yard master? A. I believe so, yes, sir.

Q. Did he say anything about why he was there? A. I imagine he was called there for this incident. Mr. Owens said he would call the police department, the railroad police department.

Q. But Stallwitz didn't say anything about it when he met you? A. How do you mean, sir?

Q. I will change that. What did he say when he saw you coming or when he met you? A. I don't recall, sir. I believe it was,

"Is this the boy [79] who threw the rock" or rocks, and I said, "Yes, it is." I believe that was the extent of the conversation.

* * *

Q. Where did you go from there, or did you stay there? A. We went directly into the adjoining office, which is the yard master's location. Mr. Stallwitz seated the boy and proceeded to ask him questions.

Q. Was the yard master there? A. Yes, sir.

Q. That was Mr. Owens? A. Yes, sir.

* * *

[80] Q. There is one question I meant to ask just to be sure. Did Hughes ask or request or suggest that you go by train, or in any other fashion for that matter, down to the train master's office or yard master's office? A. You mean did he ask me to take him to the yard master's office?

Q. Yes. A. No, sir.

[81] Q. That was at your request or Tate's request, pursuant to the instructions of Owens; is that right? You took him? A. That is correct.

Q. You didn't ask him whether he wanted to go? A. He didn't have much choice.

* * *

Q. Was that the first thing that happened? Can you tell us, in as much detail as you recall, exactly what occurred from the time you walked into the yard master's office? A. No, sir, I can't recall anything specifically. Mr. Stallwitz proceeded to ask the boy questions and Mr. Owens was going about his work and he was telling us where to take the remaining train that we had to dispose of it.

* * *

[82] Q. Did you or Tate or Alban or Owens at any time during the time that you were in Owen's office join together with Stallwitz in talking to or interrogating Hughes? A. No, sir, other than I believe I repeatedly asked him why did he throw the rocks, and I belive Mr. Alban asked him, and I believe his reply was the other boy threw the rocks, that he didn't.

* * *

Q. Was Owens part of the group or was he there and did he hear you asking these questions? A. Mr. Owens was there. He did not, to the best of my knowledge, specifically take part in any questions, as neither did myself or the rest of us.

* * *

[85] Q. Did you make any attempt to contact any one of the members of his family? A. No, sir, I did not.

Q. Did Tate or Alban or Stallwitz or Owens, to your knowledge? A. No, sir, not to my knowledge.

Q. He was asked where he lived though? A. Oh, yes.

* * *

Q. About how long were you there? A. Maybe 15 minutes or so.

* * *

Q. Did you leave before Stallwitz and Hughes? A. As I recall, we did leave. I believe he was still speaking with Hughes when we left the office.

* * *

[86] Q. At what time and to whom did you, Tate and Alban make a report of the incident? A. We were requested by written notice to come into the train master's office, I believe it was on the 28th of the same month, to make a statement about the incident.

Q. Who did you make the statement to? A. Mr. Driesbach, who was then assistant train master.

Q. Did you make that statement orally or in writing? A. Both.

* * *

[87] Q. To your knowledge, have Mr. Tate and Mr. Alban made similar reports? A. Yes, sir, I believe so.

Q. You haven't seen those? A. I do recall reading Mr. Alban's statement about it.

* * *

[88] Q. Did he make any comment in the office, to your recollection, about his eye or his head hurting? A. I believe he said something about his eye hurting or his abrasion, or whatever it was up there, hurting.

Q. It was in response to that comment that Stallwitz put a cold compress on? You mean a cold, wet towel, or something like that? [89] A. Yes, sir.

* * *

Q. At approximately what time, to the best of your recollection, was it when you and Tate and Alban left the yard master's office? A. Somewhere around close to 9 o'clock.

Q. Stallwitz and the boy were still there at that time? A. As far as I know, yes, sir.

Q. To the best of your recollection, you had been in the yard master's office, between the trainman's room and the yard master's office, about a half hour? A. No, sir. About 15 minutes or so.

Q. 15 or 20 minutes possibly? A. Yes.

Q. You don't know how long after you left that Hughes left? A. No, sir, I don't.

* * *

[92] CHARLES G. STALLWITZ

* * *

EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. FRIEDMAN:

* * *

Q. You have been a railroad policeman since 1931? A. Yes, sir.

Q. For the Pennsylvania Railroad during all this time? A. Yes, sir.

* * *

[93] Q. Do you have any relationship as a public police officer? A. With the Metropolitan Police?

[94] Q. Are you authorized in any way as a public officer? You don't carry on any public police activities? A. No. Just for the railroad.

* * *

Q. From whom do you receive instructions, other than with respect to the performance of your regular routine duties? A. Captain Fisher in Baltimore.

Q. So that if someone wants your services, they call Captain Fisher and he in turn calls you? [95] A. That's right, or if I am — like in Washington, the yard master or anyone could call me and I would go to them.

Q. Is Mr. Owens the yard master? A. Yes, sir.

Q. He would call upon you to perform services? A. That's right, yes, sir.

* * *

[96] Q. In general terms, what are your instructions with respect to people who are guilty or charged with either commiting a misdemeanor, improper conduct, or damaging property, and so on?

A. Well, we take them to the precinct where they are interviewed and, if there is sufficient evidence, a charge is made against them for whatever it is.

* * *

Q. That you make the investigation and you interrogate people and you find out whatever you can, including those people who are complained of; is that correct? A. That's right.

Q. If you feel there is a reason, you then take them to the Metropolitan Police? A. That's right.

* * *

[98] Q. What I am asking you is this: If you are told that somebody has been found breaking a window or breaking a door, or you find them, or you are told that so and so broke open a freight car door and that persons comes in, what are you instructed to do? What are you supposed to do? A. We are supposed to go and investigate it as fully as possible.

Q. Including talking to the person who is accused? A. That's right.

[99] Q. After you do that, then what? A. Then I take them to the precinct.

Q. Those are your instructions? A. That's right.

Q. Your conduct your own investigation and then proceed to take them to the Metropolitan Police? A. That's right.

Q. If you feel that there is any further need for it? A. That's right.

Q. Do you take them to the police or are you instructed to take them to the police only if a charge is to be made? A. No. It is very rare that we ever take anyone in for investigation and then release them.

Q. It is possible that after your own investigation you will release them? A. That's right.

Q. Do you actually arrest people? A. Yes, sir. I guess you would class it as arrest. I take them from wherever this thing happens to the precinct and prefer the charges and they put me down as complainant.

* * *

[100] Q. In connection with this particular incident, that is, the incident relating to Langston Hughes, when did you first come into the picutre? When did you first hear about it? A. At about 8 p.m., September 21st.

Q. How did you hear about it? A. I came to the yard master's office and Mr. Owens advised me that an engine crew was passing Deanwood and some boys had stoned the train — I mean the engine, and broke a window and they had apprehended one of the boys and was bringing him down to the Benning Yard office. This is the first I knew about it.

Q. What did Mr. Owens ask or tell you to do? A. He didn't tell me. He just told me, "Charlie, I am telling you they have got this boy. Now it is up to you."

Q. What did you do? Where were you at the time you received the call? A. In the yard master's office.

* * *

[102] Q. Could you describe the actual meeting? Where were you and how did he come in, and so on? A. When the engine came down and stopped in front of the yard master's office, I walked out to the engine and Mr. Ruby was on the platform with the little boy and he climbed down the ladder and I asked him to come with me and he walked into the office with me.

Q. Did he come voluntarily? A. Yes, sir.

Q. You didn't have to grab him? A. No, sir.

Q. Or hold his belt or anything else? A. No.

Q. Did Mr. Ruby — A. After —

Q. Did Mr. Ruby hold him? A. After I took him in?

Q. No. In the process of his getting off the engine. A. He held him until he got down off the steps. He didn't want him to fall. It is right steep. It is about four steps down.

* * *

[103] Q. When you first saw the boy, can you tell us what he was wearing and what he looked like, and so on, and how he acted? A. If I remember correctly, he was wearing a light blue shade of that blue (indicating), I think a knitted shirt, polo shirt, and I think tan trousers, if I am not mistaken, and bareheaded.

Q. How did he act? Was he — A. He acted very calm while I talked to him.

Q. Calm and polite? A. Yes, sir, every bit of it.

Q. Did you notice any bruises or injuries or anything else? A. I noticed a brush burn on his forehead here (indicating). I don't know whether it was the left side or right side.

Q. A brush burn? A. A brush burn. It was bleeding.

Q. It was bleeding actually? A. Yes, sir. I said, "How did you get that?" He said, "The man who caught me slapped me side the head," and I turned to Ruby and I said, "How about that, Ruby?" and he said, "No, I didn't." He said, "When I went to grab for this boy, he fell and I fell on top of him." That is about all I know about.

Q. This was still at the engine as he came down? [104] A. No. At the office.

Q. He came down from the engine and you said, "Come along with me"? A. "Come with me, son," or words similar to that ef-

fect, and he walked along with me and he sat down in a chair and I sat on another chair and talked to him.

Q. Where was this? A. In the yard master's office.

Q. You went directly in the yard master's office? A. Yes, sir.

* * *

[105] Q. The only thing you told us about what you had learned so far is that you were told by Owens that there had been a report of a boy who was caught. [106] A. I questioned the boy about the stone throwing and he said no, he didn't, but the boy that was with him, known only as Dukey, was the one who threw the stones and he ran away.

* * *

Q. Tell us as best you recall what the conversation was between yourself and Hughes and to the extent that Ruby participated in it what he said. A. Well, I first asked him his name and he told me his name. I said, "Langston, what about this stone throwing?" He said, "I didn't throw any stones. The other boy threw the stones [107] and ran." I said, "What's the matter with your head?" and he said, "The man who caught me slapped me up side of the head." I said, "Are you sure you didn't throw any stones?" He said, "Yes." So I turned to Ruby and I said, "Ruby, you heard what the boy said. What have you got to say?" He said, "Well, I didn't hit the boy. Why would I hit a child that way?" and then he went on to relate that when he jumped off the engine and started for the boy, he turned as if to go and stumbled and fell and he fell on top of him.

* * *

[108] Q. Did you call Langston's parents? A. No, sir, I did not.

Q. Did you make any attempt to? A. No, sir.

* * *

[109] Q. Did you call a doctor? A. No, sir, I did not.

Q. Did you do anything about the bleeding? A. Yes, sir, I did.

Q. What was that? A. When I got him to the precinct, I took him to the wash room and he dampened one of these paper towels and dabbed it on his head to clear the blood up.

* * *

[110] Q. You then called your office in Baltimore, I guess, while Langston was still sitting there? A. Yes, sir.

Q. Was Ruby still there, too? A. I don't recall whether he went out or not.

Q. You spoke with a Mr. Yost? A. That's right.

Q. What transpired? A. I explained to him what I had learned and what had occurred and he said, "Well, take him to the precinct and charge him for throwing stones at the engine."

Q. He told you to take him to the Metropolitan Police? A. That's right, the 14th Precinct.

* * *

[111] Q. To the best of your recollection, when you saw Ruby, what was he wearing? A. I think he had a white sweatshirt on and a pair of tan trousers, if I remember correctly.

Q. Was he wearing a dark jacket of any kind? A. I don't recall, but I know he had a sweatshirt on.

Q. How about a dark jacket? Was he carrying anything that you saw? A. I didn't see any, no, sir.

* * *

Q. When you say Ruby, did he appear out of breath or in any other way — A. No, sir.

Q. — disturbed by the incident? A. No, not that I noticed.

Q. Did he seem angry or bothered? A. No, sir.

[112] Q. He seemed perfectly calm? A. Yes, sir.

* * *

Q. *** When you received the instruction from Mr. Yost to take Langston to the police precinct, about what time was that; do you remember? A. Oh, possibly 20 or 25 minutes after.

Q. How far away is the precinct from where you were? A. I would say three-quarters of a mile. Maybe a little further.

Q. Did you ask Langston whether or not he wanted to go with you? A. No, sir.

* * *

[114] Q. Were you holding him during any of this time? A. No, sir. I didn't put my hands on him.

Q. You didn't touch him? A. No, sir.

Q. You went into the precinct with him? A. That's right.

Q. What occurred? A. I talked to Officer Savage and explained to him what I had learned and he took the information down on a paper and he said he will file a complaint, that he will make up the complaint.

Q. What was the charge? A. Throwing stones at the engine.

* * *

[118] Q. Approximately what time did you leave the precinct that evening? A. I would say about 20 minutes. I don't know the exact time. It was going on 9 o'clock when I left.

Q. You got there about a quarter to, or so, or ten to? A. About 8:30 or 25 minutes to 9.

Q. Have you had any occasion on prior occasions to charge or be involved in an investigation concerning stone throwing similar to this? A. Not recently, no, sir.

Q. How long ago prior to this time? A. Several months.

Q. In the same area? A. No. In Washington. We have it all over Washington, on the passenger line and on the freight line.

* * *

[119] Q. Have you received any particular instructions regarding the handling of stone throwing complaints or incidents? A. Yes. I tell you, Mr. Friedman, we have seizures of it. It might happen two or three days at a time and then it will stop for a month or two, and when it starts we are instructed to give [120] that as much attention as possible.

Q. Are there any specific instructions as to how to attempt to handle those cases? A. Try to catch them in the act of throwing the stones.

Q. And then do what? A. Then to file charges against them.

Q. Immediately? A. That's right.

Q. Are those instructions, to your knowledge, distributed through and made applicable to trainmen? A. No — to whom?

Q. To crew men. A. No, sir, they are not.

Q. Are they instructed or encouraged — let's say instructed to attempt to apprehend stone throwers in the act? A. Not to my knowledge, no, sir.

Q. Who is supposed to attempt to catch them in the act? A. The police department.

Q. The railroad police? A. Yes. We cover these various localities where it is happening.

Q. Then there are set localities where these things seem to happen; is that correct? [121] A. That's right, yes, sir.

Q. Is the Kenilworth area one of those? A. Yes, sir.

* * *

[122] Q. Were any statements made by you in connection with the [123] incident? A. Only my report to my office.

Q. And you did make such a report? A. A written report.

* * *

[Excerpts from Deposition of Harold Kenneth Owens, Washington, D.C., Sept. 23, 1966]

* * *

[3] HAROLD KENNETH OWENS

* * *

EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. FRIEDMAN:

* * *

Q. What is your employment, sir? A. Yardmaster, Pennsylvania Railroad.

* * *

Q. For how long have you been in this position? A. 1945, I believe.

* * *

[4] Q. Could you describe briefly what your functions and responsibilities are as yardmaster? A. It is the orderly classification of all inbound and outbound cars, preparing the information for all yard crews, seeing to it that all of them get their orders on my particular tour of duty.

Q. What area does your jurisdiction cover? Does it cover the entire Washington area or a portion of it, or what area generally? A. Yes, Washington Yard it is called.

Q. Which is located where? A. From approximately Landover to the river as the railroad runs.

Q. Does your work encompass both passenger and freight car movement? A. Generally not. Freight only. In an emergency only would it be passenger.

Q. Do you make up schedules for train movement? A. No.

Q. Who does that? [5] A. Well, that is done in the Office of Superintendent of Transportation.

Q. It is your function, then, within the schedules to make certain that the cars and the trains are moved to conform with schedule, is that correct? A. As near as possible, yes.

Q. Do you assign crews to the movement, or is that done by someone else? A. I do.

Q. You do the crew assignment? A. Yes.

Q. Is this a continuing, changing operation, or do you make up a schedule of car movement, or is it merely that you supervise the movement which has already been scheduled? A. Well, I supervise the movements that have already been scheduled and change them as occasion demands.

Q. When a train is moving making up cars, delivering cars to shippers' loading platforms or to points for loading, would that come directly under your supervision? A. Yes.

Q. Would you make up a schedule for it and tell the engineman, conductor where and when to move? A. In effect, yes.

Q. [6] To be specific, I direct your attention to the train running on September 21st about 7:30 in the evening with Engine No. 5609, the conductor was Mr. Tate, engineman Alban, brakeman Ruby. Now that has been described generally — and if I am wrong I would like to get my understanding a little more clear — as a train which was moving from the B. & S. siding on Kenilworth Avenue shifting cars, finishing the shifting, and coming down No. 3 freight track toward the terminal. Is that a fairly accurate or complete statement of what was being done with that train? Or what does it mean actually? I am not sure that I understand exactly what was taking place. A. Well, that's probably an accurate description of it. To be honest with you, I don't remember exactly what they were doing, but they would have been in the process of classification.

Q. Which means what? A. In that area. Which is about a mile

away from me, and, of course, out of my sight and they were completing instructions they had previously received.

Q. Which would be, what, to take cars from one place to another and spot them for shippers to load; is that correct? A. And remove empties. Yes, sir.

Q. And then they had finished their work, if that language [7] is correct, and were coming down toward the terminal to do what, to just drop off the remaining cars, would that be — A. To yard their train, yes. To put their train in the yard.

Q. And all this work is done under your general supervision? A. Yes, sir.

Q. So that the direct superior of Mr. Tate, who was in charge of that train, was yourself? A. Yes, sir.

Q. During your tour of duty, of course? A. Right.

Q. Do you recall being advised sometime during that evening that an incident of rock throwing had occurred with respect to this train? Are you familiar generally with the fact that an incident of rock throwing had occurred with respect to a train headed by this crew about September 21, 1964? A. I feel that it is the same incident that I have in mind; yes, sir.

Q. Where a boy was apprehended, Langston Hughes? A. Yes.

Q. What was the first contact that you had with that incident? [8] A. I was notified by telephone by the conductor that there was a rock-throwing incident.

Q. Do you know approximately what time that was? A. I actually don't. As soon as I am apprised of something of that nature I immediately notify our Police Department, and since that is out of my jurisdiction it doesn't come directly under me, that's something I —

* * *

Q. You say you were called on the telephone. Do you know who made the call? A. I think I stated Mr. Tate, the conductor; yes, sir.

Q. The conductor called. Do you recall what he told you or what he asked you? A. Not his exact words.

Q. As best you recall. A. "The boys were throwing rocks." That's all I can tell you at the moment.

* * *

[9] Q. Did he tell you that they had caught one of the boys, or caught a boy, or anything of that sort? A. I honestly don't remember.

Q. Do you recall giving him any instructions or making any comment or doing anything about it in the conversation? A. No, sir.

Q. You don't remember your conversation with them at all? A. I don't remember the conversation. I am aware, of course, that some of this had taken place, but I don't know when I became aware of it but I think it was later though.

Q. I see. You don't recall whether or not he told you during the course of the phone conversation that he had a boy? A. No, sir. No, I do not, sir.

Q. What did you do as a result of the conversation? Or what did you tell him to do, if you recall? A. I told him I would report it to the Police Department, which I did.

Q. And did you tell him to do anything further? A. I don't remember.

[10] Q. Did you report it to the police? A. Yes, sir.

Q. When you say "police," you mean railroad police — A. Yes, sir.

Q. — or Metropolitan Police?

Railroad police? A. The railroad police, if available, and the

Metropolitan if they are not available. But the railroad police in this instance I am sure because I remember him being there.

Q. Who did you report it to specifically? A. C. G. Stallwitz.

* * *

[11] Q. And you merely notified Mr. Stallwitz that an incident had occurred? A. Yes.

* * *

[12] Q. Was there anyone else on the engine with him? A. Yes. There was another man on the engine, another trainman, and I don't remember at the moment which one it was — I would have to look at the records to find it — and there was a small colored boy also on the engine when they arrived and there were two or three fellows, including Stallwitz, walking towards the engine; and that is where my contact with it ceased, at that point. I was too busy to continue to watch it.

Q. Did you see the boy on the engine? A. I seen the boy getting off the engine.

* * *

[13] Q. Were you surprised to see the boy? A. Rather.

Q. You mean you didn't know him before he got off the engine? A. I don't remember that I did; no, sir.

Q. But you do remember that you were surprised to see him getting off the engine? A. Yes.

* * *

Q. Do you know now or did you know at the time why the [14] boy was taken on the engine to the yard? A. By assumption only.

Q. You had no report made to you of what was happening or why it was done? A. Indirectly I have the information from sources that I can't remember at the moment that it was done because the boy had been throwing rocks and Mr. Ruby apprehended him. This

is all hearsay. I don't remember hearing Mr. Ruby say this himself and I don't remember who told me.

Q. Were you told by Mr. Tate that the boy had been apprehended and did you tell him to bring the boy down? A. No, sir.

Q. That is certain? A. That is certain.

Q. You recall that you did not so tell him? A. I don't recall. But I do know that I would never have told anyone to apprehend anyone else unless he was a policeman. He wouldn't have the right to.

Q. And you state that you did not tell him to bring the boy to the office? A. That is correct.

* * *

[15] Q. Do you state for the record that you did not know until you saw the boy get off the engine that he was being brought to the yard? A. I'm not positive that I didn't know that he was on the engine. I may have known that he was on the engine before he got to the yard but I don't recall how I new it if I did.

Q. Do you recall whether or not you told Mr. Stallwitz there was a boy coming? A. I may have before he got to the office — someone may have supplied me with more information than I had in the first place — but I don't know. This didn't take place all at one instant.

* * *

[16] Q. But can you state with certainty that Mr. Tate did not in his first telephone conversation with you tell you that a boy had been apprehended? A. If he did, I didn't hear it; that I'm sure of.

Q. And can you also state that you did not tell him to [17] bring the boy to the yard? A. That I'm positive of.

Q. Either in the first or in any subsequent conversation? A. That's correct.

Q. And if Mr. Tate states flatly that you did so instruct him, he is incorrect? A. That is correct. He is incorrect.

Q. What are the instructions, if any, regarding train stoning incidents? Are there any? A. Report it to the Police Department immediately.

Q. On whose part? I mean, who is to report? A. Well, the crews generally report to the yardmaster, because that's their easiest course of communication, and the yardmaster would report it to the Police Department. However, it might be done direct, too, if contact was not made with the yardmaster immediately.

Q. Are there any instructions regarding apprehension of people who may engage in these incidents? A. No, indeed. No instructions.

* * *

[18] Q. Have there been other cases in which stoning incidents occurred and persons were apprehended? A. Not that I know about.

Q. This is the only one? A. To the best of my knowledge, yes, sir.

Q. Have there been any other incidents in which trainmen attempted to apprehend people engaged in such incidents? A. Not that I know about.

* * *

[19] Q. Have there been many incidents involving stoning of trains or engines? A. Yes, sir. Lots of them.

Q. In the Kenilworth area? A. Yes, sir.

Q. In other areas of the yard? A. Yes, sir.

Q. What does the railroad attempt to do about it? A. Well, they try to get their Police Department there and either keep them away or apprehend them if they can't be kept away.

Q. Are there any efforts made or have there been any to fence the line or to patrol the line in order to prevent stoning incidents? A. Well, I'm not sure whether that was the intention or not. There has been a little fence put up and I don't know who put it up really.

Q. Where is the fence? A. But there has been a lot of patrolling by our Police Department trying to prevent it.

Q. Speak of a fence. Where was that fence put up? [20] A. Between our C yard and the — I guess that's Route 99. It is a continuation of Kenilworth Avenue toward Pennyslvania Avenue from East Capitol Street.

Q. Is this fence in the area in which this particular incident occurred? A. Well, it's better than a half a mile from it, where it starts, but it is the same type of area.

* * *

Q. So there is no fence where the pedestrain overpass is? A. No. No fence unless it is in the median in Kenilworth Avenue, which would be Highway Department fence.

* * *

[21] Q. There is no fence there? A. No fence on the railroad; no, sir.

Q. Is there, in fact, a path or other route which pedestrians frequently use to cross your yard and tracks in that area? A. Yes, there is.

Q. Has there ever been any attempt made by the railroad to close that path and stop people from using it? A. I couldn't answer.

Q. To your knowledge. A. To my knowledge, no.

Q. And people have been using that route to cross tracks for how long, to your knowledge? A. Since I've been working on the railroad.

Q. And they come down off the pedestrian bridge and cross the tracks, continuation, is that correct? Or go to it across the tracks? A. Well, this was long before there was a pedestrain bridge that I remember then going back and forth across. Since that time I haven't been in a position to see it. I have been in the office.

Q. But they did and still do cross the tracks at that point? [22] A. To the best of my knowledge, yes.

Q. And nothing has been done by the railroad to attempt to prevent it, to your knowledge? A. Not that I can state, no.

Q. Is this particular area one in which there have been numerous or any number of stoning incidents? A. Yes, that is.

Q. Over what period of time? A. I would say seven or eight years.

Q. Have there been any injuries caused as a result of the stonings? A. There has been in the Washington area, but I don't remember any injuries at that particular point.

* * *

Q. Is there any particular rule or regulation or instruction governing the conduct of your employees, trainmen, [23] in connection with the operation of a train if they see someone walking on the right-of-way either at Kenilworth crossing the tracks or otherwise? A. Yes. We have specific instructions, all employees do, to ask trespassers to please get off of the right-of-way.

Q. At this particular point where people do cross frequently and constantly over a period of many years, as far as you know there has been no action taken other than these instructions to stop them; is that correct? To your knowledge. A. To my knowledge, yes.

Q. And the only action which is requested or directed of your employees is to request trespassers to leave? A. That is correct.

And if they do not leave then to report to their superior officer and they in turn to the Police Department.

Q. Now, is that a written instruction? Is it part of this book of rules or is it just the general instruction? A. General instructions is the way we use it. The book of rules are the instructions which would lead up to that.

Q. They are not requested or directed to do anything other than to request trespassers to leave? A. That is correct.

Q. And to report the same? [24] A. Yes.

* * *

[28] Q. You don't know whether or not Mr. Stallwitz did, in fact, come into your office with the boy? A. No, I really couldn't say.

Q. And if he was there, you don't know how long he was there? A. That's right.

Q. Is it possible that he was talking to the boy for as much as 15 to 30 minutes, without your being aware of it, in [29] your office? A. It is possible, yes, sir; with my duties it would be quite possible for another conversation to be going on for that long without me being able to connect it intelligently, at any rate.

* * *

[31] Q. Did you speak with the boy at all? A. No, sir.

Q. Did you tell Mr. Stallwitz to go to the Metropolitan Police? A. No, sir.

Q. Or to do anything else? A. That's his department.

Q. You merely turned the matter over to him? [32] A. That's right.

Q. And he did what seemed appropriate to him? A. Yes.

Q. You have no jurisdiction over Mr. Stallwitz? A. Not in that respect, no, sir.

Q. Who is his superior, do you know? A. His superior is the captain of the police in Baltimore.

Q. And he would normally get his instructions from him? A. That's where his instructions come from.

Q. Is there anyone other than yourself with whom Mr. Tate, as the conductor of this train, would have had instructions or from whom he would have secured instructions regarding what he should do concerning the stoning incident, that is, what to do with the boy he had apprehended, and so on? A. No one else he would have received instructions from. The conductor is in charge of his own train.

* * *

[34] Q. Mr. Owens, would there be reports in the railroad records of injuries to your personnel from stoning incidents? A. Yes, sir. It wouldn't be my reports, however.

* * *

[35] Q. How are those reports secured, do you know what is the occasion for them? A. Well, someone in the freight trainmaster's department takes a statement from them.

Q. What relationship does the freight trainmaster's office have to the men and to you? A. The freight trainmaster is my immediate superior that is in charge of all freight transportation in the Washington area.

Q. Would the freight trainmaster be any more directly in charge of personnel than you of this type doing this kind of work? A. Securing statements you mean?

Q. Well, in terms of their functions, in terms of their performance or directing their work. A. Well, directing their work and activity in my jurisdiction, but securing information as to in-

cidents taking place, that always comes through the freight trainmaster direct.

* * *

[39] MR. FRIEDMAN: Mr. McArdle, would you know, is the report which I have here the one which was supplied on demand the one that was referred to in the interrogatory?

MR. McARDLE: Yes, sir.

MR. FRIEDMAN: This is the one.

MR. McARDLE: Do you want to identify that?

MR. FRIEDMAN: I'm sorry. Correct.

The report of G. O. Tate is referred to as statement of G. O. Tate dated October 8, 1964. I think that is enough.

MR. McARDLE: Yes.

BY MR. FRIEDMAN:

* * *

Q. Just to recapitulate. You had just one telephone conversation with Mr. Tate? A. That I'm sure of.

Q. That you are sure of.

There may have been more? A. There may have been.

Q. Before he arrived at the yard? [40] A. There may have been. I did have other information before the engine arrived at the office. I do not know how it was received. At this time I do not remember. But I was aware that there was an unusual situation.

Q. You were aware that a boy was coming down on the engine? A. I really don't remember. I would assume that's probably the fact; yes.

Q. In other words, it was that that made the situation unusual? A. Well, that and the fact — if I knew that, yes, that would make it unusual. But it could have been the engine coming down light — if I remember right, the engine did come down light without a trip. That

would be an unusual situation. I knew something had to be different; it wasn't normal.

* * *

[42] Q. Is it possible that you told the conductor to bring him down? A. No, sir.

Q. That is not possible? A. That is not possible.

Q. Let me ask this: If you knew that a boy had been apprehended, what would you have told the conductor? A. It would have to happen, I suppose, before I could answer it. My first reaction would be hands off.

Q. Let him go? A. Let him go, certainly.

Q. Before or after you would call the police? Suppose you found out about it after you had called the railroad police? A. That wouldn't make any difference to me, because that employee would have no jurisdiction there. He would have no right to do that. Our book of rules and instructions does not permit us to have physical contact with anyone, employees or otherwise.

[43] Q. What you are saying, then, is that the action taken by Mr. Ruby in apprehending and Mr. Ruby and the others in bringing the boy down to the yard was in violation of the railroad rules? A. As I understand them, yes, sir.

* * *

[44] Q. As the superior of Mr. Ruby, Mr. Tate, and Mr. Alban, did you recommend disciplinary action for their breach of the rules? A. No, sir.

Q. Was any taken? A. I have no information to that effect.

Q. To your knowledge — A. That's right.

Q. — none was taken? A. Not to my knowledge.

* * *

[45] Q. Is jumping off the train, even as Mr. Ruby here did it, a breach of proper conduct in your view? A. In my honest opinion, yes, sir.

Q. But you recommended no disciplinary action? A. No, sir.

Q. Would it be in your jurisdiction to recommend such action? A. It is not generally handled that way. The incident is related to our trainmaster and he gleans the information from the men and if he wants further information from us he asks for it and he recommends the discipline as a result of their actions.

* * *

[Excerpts from Deposition of Garvin O. Tate, Washington, D.C., Oct. 21, 1966]

* * *

[3] GARVIN O. TATE

* * *

EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. FRIEDMAN:

* * *

Q. And what is your employment, Mr. Tate? A. Freight conductor, Pennsylvania Railroad.

* * *

Q. And do you perform any other capacity for the railroad? A. Yes, I word as a part-time yard master.

* * *

[4] Q. When would the part-time yard master work come in? A. The part-time yard master's work, vacation, reliefs, days off, by request. In other words, we just fill the vacancies when there is not someone else to take the job.

* * *

[7] Q. And approximately what time of the day was it? A. 6:50 p.m. — well, let me state that our time is all kept by standard time the year around.

Q. So this would be 7:50 Daylight Saving Time? A. If Daylight Saving was in effect at this time, and I don't recall if it was or not.

* * *

[9] Q. As you approached the cross over, did anything of special significance occur that you noted? A. Yes, I observed two boys reach significance occur that you noted? A. Yes, I observed two boys reach down and pick up stones. I warned the crew that we were possibly going to be stoned, which as we neared them we were stoned. I hollered to Mr. Alban to duck, which he did.

* * *

Q. How far away were you when you first saw the boys? A. Oh, approximately two catenary poles, which I believe —

Q. Two what? A. Catenary poles. I believe they are 150 feet apart, this would make it approximately 300 feet.

* * *

[10] Q. Which track was the train proceeding on, do you recall? A. No. 3 freight.

Q. And where were the boys standing? A. At first they were standing on No. 3, later they moved over adjacent to No. 1 track.

Q. Now, you first saw them standing on No. 3. In other words, directly ahead of the train? A. Directly ahead of us.

* * *

Q. When did they start to move from No. 3 track in the direction of No. 1, when did they leave No. 3 track, in other words? A. As we approached the area.

* * *

[12] Q. When you first saw them could you tell whether or not they were standing on the track or whether they were crossing or walking across the track? A. It appeared that they were playing on the railroad, on the tracks.

Q. Is the area where you saw them an area which is used as a crossing or pedestrian crossing, people walking back and forth across the tracks, do you know? A. It is.

* * *

Q. So they might have been either playing or crossing at that point when you first saw them, is that correct? A. It is possible, yes.

* * *

[13] Q. When did you first see them pick up, or do anything which indicated that they were going to stone the engine? A. When they crossed from No. 3 track to No. 1 track they immediately picked up stones along No. 1 track.

Q. I see. How far away is No. 1 track from No. 3? A. About 15 feet.

Q. 15 feet? A. Roughly, yes, sir.'

Q. And did they continue walking on or across No. 1 track, or where did they stop, the boys? A. They stoned us from No. 1 track.

* * *

[14] Q. What was it, if you recall, that you said to the other men in the cab, Alban and Ruby, when you made your comment or warning? A. I think I definitely called to Mr. Alban to duck because I observed the stone being thrown towards the engine, which was traveling with the fear that it might hit him.

* * 8

[15] Q. Did Mr. Alban apply his brakes? A. After the glass

was broken in the engine and several stones had hit the engine, he did apply the brakes.

* * *

Q. Now, do you have any idea how many stones hit the engine? A. I think approximately six.

* * *

Q. You said something about a window being broken. Was that one of the first stones that hit, or when? A. One of the first, yes.

* * *

Q. Which window was it that was broken? A. The right rear upper glass.

* * *

[16] Q. Was anyone injured by glass or a stone or anything else? A. No, sir.

Q. Did the glass spatter inside the cab? A. It did.

Q. And what happened after that? A. Mr. Ruby left the engine immediately, and apprehended one of the boys. Mr. Alban stopped the engine and he and I followed Mr. Ruby.

* * *

[17] Q. Could you see him apprehend the boy? A. Yes.

Q. Would you describe, as best you can, exactly what happened? [18] A. The two boys apparently after stoning the train continued to play across the path toward the B&O tracks, and as Mr. Ruby approached them one of the boys observed him and ran. The other boy didn't notice him until he was just within a few feet of him and they boy started to run and he tripped, fell, and at the same time as Mr. Ruby reached for him they both fell to the ground.

* * *

Q. And you think that Ruby got off the train just about adjacent to them? A. He did get off adjacent to them and I followed.

Q. But they did not see him get off? A. As I said before, one of the boys did see him get off.

[19] Q. Get off the train? A. I am sure that they did.

Q. And started to run immediately? A. Yes.

Q. And the other boy did not. Had the other boy turned away? A. He was playing or picking up more stones. I couldn't exactly say. He was in the area of No. 1 track.

Q. Had he turned to continue walking across, or couldn't you tell? A. He had his back to us. Whether he was — No, he wasn't moving.

Q. Did Ruby walk toward the boys or run? A. No, he ran.

* * *

[20] Q. Now, you say you saw Ruby catch the boy while falling. What happened after that? A. Mr. Ruby picked him up and we brought him back to the telephone which is adjacent to the Deanewood cross over and I talked to Mr. Owens, the yard master, who was on duty.

Q. Was Ruby holding the boy, or were you holding the boy? Were all of three of you there? A. No, Mr. Ruby was holding the boy and I believe by this time Mr. Alban was helping to lead him back, and I followed them back over to the telephone.

Q. Was Alban holding the boy, too? A. By the arm, I believe, sir.

Q. And what was Ruby holding him by? A. By his belt.

Q. And all three of you with the boy walked to the telephone? A. That's right.

* * *

[21] Q. And you called the yard master? A. Right.

Q. And what occurred in the call, did you reach the yard master? A. Yes, sir, I did.

Q. Did you reach him? A. Yes. I told the yard master what

had happened, that we had the boy. I asked him to get the Metropolitan Police or the railroad police, and he informed me that Mr. Stallwitz the railroad police would be there and we were to come to Benning.

Q. All three of you, plus the boy, were to come down to the yard? A. Yes, sir.

* * *

Q. Well, how did you go — A. We went —

[22] Q. — from the cross over to the yard? A. We went on the engine.

Q. And did Mr. Owens tell you to use the engine or to walk, or to take a cab or anything else? Was there any comment made about it? A. No.

Q. He didn't say. He merely said, "Come down with the boy to the yard?" A. That is correct.

Q. And he would have Mr. Stallwitz, the railroad policeman, there? A. Right.

* * *

Q. I see. But you had no diffficulty seeing the boys, it was light enough for that? A. Yes, sir.

* * *

Q. [24] Q. Now, did you hold the boy at all, or touch the boy? A. No, sir.

Q. Alban and Ruby held or assisted him. How did he get to the train, by the way. Did he walk or was he carried? A. He was led.

Q. He was led and dragged up the steps of the cab? A. In a very careful manner.

Q. What do you mean by that? A. To prevent injury to anyone.

Q. Was the boy injured? A. He had a slight, what appeared to be a brush burn, or ground burn, on his left forehead.

Q. Was it bleeding? A. Very slightly.

Q. Did you see Mr. Ruby hit the boy? A. No, sir.

Q. When you say, no, sir, do you mean that he did not or [25] did not see it? A. He did not at any time hit the boy.

Q. Did Mr. Alban hit the boy? A. He did not at any time.

Q. Did you? A. No, sir.

Q. Were there any other people in the vicinity that you recall seeing, or noticed at the time of the incident? A. There were a few people that crossed the track. There is at all times people crossing back and forth in this area.

* * *

Q. Has it been going on since you know the area? A. Yes.

Q. And you have been serving in that area since approximately when, 1953, '51? A. '51.

* * *

[26] Q. Well, about the time, or at the time the events which we have been describing occurred, that is, the time just prior to and during the stoning and the apprehension of the boy, did you see any other people in the area? A. During the stoning, the two boys were the only people that I observed near the track.

* * *

[27] Q. When you got the boy on the engine, did he say anything or did you say anything to him? A. Not to my knowledge, no.

* * *

Q. What was stated. Apparently something was said by [28] somebody. A. Of course, after I made the telephone call, I repeated to Mr. Alban and Mr. Ruby the instructions that we were to take the boy to Benning. And this was in his presence.

Q. I see. He made no comment? A. He made no comment.

Q. Did you ask him whether or not he would come? A. No, sir.

Q. You merely took him with you? A. Yes, sir.

* * *

[31] Q. Have you ever been told what to do in connection with trespassers on railroad property? A. To warn them to stay away, of course.

Q. Have you been told whether or not to physically apprehend people who cause damage? A. No, sir.

Q. Have you been told whether or not to apprehend trespassers? A. No, sir.

Q. Now, the paper that you referred to awhile back, do you have that, please. May I see it? A. (Handed)

MR. FRIEDMAN: For the record, could we just identify it as a copy, carbon copy, of a statement dated October 8, 1964, statement of G. O. Tate, Chesapeake Division, Freight Brakeman, in connection with apprehension of colored boy after having stoned engine 5609, crew 21B, Deanewood, about 6:50 p.m., September 21, 1964.

BY MR. FRIEDMAN:

[32] Q. Is that correct, Mr. Tate, that identification which I read from the top? A. Yes.

Q. This is a two-page carbon copy and it is signed — is that your signature on the two pages? A. It is.

* * *

[33] Q. Have there been many stonings of trains in the Washington or Benning area? A. Numerous.

Q. In this particular site? A. Yes.

* * *

Q. Is there a fence there? A. Not on the railroad, no, sir.

Q. So that there is nothing physically to prevent people from walking across? A. No, sir.

Q. To your knowledge, has Mr. Ruby or yourself or Mr. Alban

been involved in stoning incidents prior to this time? A. I couldn't answer for Mr. Ruby or Mr. Alban. Myself, yes, numbers of times.

Q. And have you on any previous occasions apprehended or chased any of the people who did the stoning? A. On previous occasions I have chased but never [34] apprehended anyone.

Q. I see. You would get off the train and try to catch the people who did it, is that correct? A. I have.

Q. Were those incidents reported to your superior at the time, the yardmaster or whoever it would be? A. Yes, they have been reported several times. I wouldn't say that all incidents have been reported on my part.

* * *

Q. In your report of those incidents or incidents of that type, would you indicate that you had either stopped the train and tried to catch the people who did it or merely that there had been a stoning incident, do you recall? A. Let me clarify this now. In each instance it has been made by verbal report, no written reports.

Q. Yes, sir. A. And I just wouldn't be — I wouldn't state what has — in other words, the conversations on each of them because I don't remember them.

Q. To the best of your recollection would you report [35] merely that a stoning had occurred or that you had done something to try to apprehend the person that did it? A. That a stoning had occurred.

Q. Do you recall ever reporting that you had tried to catch the person doing so? A. I don't remember at the present time.

Q. I see. As a result of any of these reports, whether of just the stoning or of trying to catch someone, were you ever given any specific instructions as to what to do in the event of future incidents? A. No, sir.

Q. Were you ever told not to get off the train? A. No, sir.

* * *

Q. Well, under the rules of the railroad, is it a proper action for you to take, as conductor, to get off the train in the event of a stoning incident? A. Yes.

Q. It is proper? A. Yes.

Q. And when you are serving as yardmaster today you would [36] so regard such action? A. Yes.

Q. And proper under the circumstances? A. Yes, sir.

Q. And would you regard such action as attempting to apprehend the person whom you felt was guilty of stoning as proper? A. Yes.

* * *

[37] Q. When you arrived at the yard, was Mr. Stallwitz at the engine? A. He came out the door of the office and met us near the engine, yes.

Q. And he was alone? A. He was alone, yes.

Q. And what did you do then? A. Released the boy to Mr. Stallwitz.

* * *

[38] Q. Did you speak with Mr. Owens after you arrived at the yard concerning the incident? A. Mr. Owens was present, yes.

Q. In the office or at the cab when you arrived? A. I don't recall if Mr. Owens left the office and came outside, or whether he remained in the office. But I do know [39] that he was present when Mr. Stallwitz and the crew, along with the boy, were discussing what had happened.

Q. Now, did he participate in that or was he merely physically in the room doing his work? A. He was physically in the room. Whether he participated in it I do not recall.

* * *

[40] Q. There was no comment or discussion between you and Owens regarding the incident at that time? A. I related what had happened in the presence of Mr. Owens and Mr. Stallwitz.

Q. Yes. Was Owens sitting listening to you at the time, or was he merely physically in the room? In other words, to put it differently. I am now listening to you speak. Was Mr. Owens listening to you in the same way? A. Yes, I am certain that he was.

Q. He was participating in the questioning to the extent of listening to it? A. I am certain that he was.

* * *

[42] Q. And your estimate of the amount of elasped time from the time you arrived at the yard until the time you left the office, was approximately how long? A. Five, possibly ten minutes. Not over that.

Q. So that the entire incident from the time it initially started until the time you left the yard was about 20 minutes? A. This is to the best of my judgment, yes.

* * *

[43] Q. Mr. Tate, going back to the incident wherein the train was stopped, can you describe the feelings and attitude of the man at that given moment? A. I can't speak for the other members of the crew, I can only speak for myself. But my feelings were to protect the Pennsylvania Railroad Company's property.

* * *

Q. Let me ask you this — were the men, to your knowledge, or you personally, agitated, irritated, or emtionally disturbed? A. As I said, I can only speak for myself but personally, no, I was not irritated nor agitated either.

* * *

46] Q. At the time of the interrogation in the office, where all of you were present, did either Mr. Alban or Mr. Ruby make a verbal statement with respect to what had occurred at the time of the apprehension? A. Yes, Mr. Alban and Mr. Ruby made a verbal statement, but I do not recall what they were at this time. Gentlemen, you will realize that two years has elapsed since this happened.

Q. I can appreciate that, Mr. Tate. I am not trying to pinpoint your deepest recesses, but I am merely trying to establish what was said, if anything. Was Mr. Ruby and Mr. Alban composed or were they in an agitated state? A. To the best of my knowledge, they were composed.

* * *

[49] Q. You said something to the effect that when you met Mr. Stallwitz, or when Stallwitz met the train at the Benning Yard, he applied a wet cloth to the boy's forehead. Would you explain that a little bit. You made a reference to it. I would just like whatever your recollection is. A. I said we released the boy to Mr. Stallwitz's custody. And after going into the office Mr. Stallwitz applied a wet cloth, a wet paper towel — what it might have been, I don't recall at the present time. I do know that he went to the rest room and came back with a wet cloth or a wet paper towel, one or the other, and wiped the little bit of blood from the boy's forehaed.

Q. I see. Did the boy complain about the forehead, do you know? A. Not to my knowledge.

Q. But it was bleeding at that time? A. Very slightly, yes, sir.

* * *

[Filed Apr. 3, 1968]

ORDER CERTIFYING TO THE DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

It appearing to the satisfaction of the Court that this action will not justify a judgment in excess of Ten Thousand Dollars, exclusive of interest and costs, it is by the Court this 3rd day of April, 1968,

ORDERED that said action be and the same hereby is certified to the District of Columbia Court of General Sessions for trial.

SEEN:

/s/ Edward J. McManus
Judge

/s/ Seymour Friedman
Attorney for Plaintiff

/s/ Paul F. McArdle
Attorney for Defendant

[Filed April 5, 1968]

MOTION FOR RECONSIDERATION AND REVOCATION OF ORDER CERTIFYING CASE TO DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

Plaintiffs, by their counsel, move the Court for reconsideration and revocation of the Order entered herein on the 3rd day of April, 1968, certifying the within case to the District of Columbia Court of General Sessions, and for reasons therefor say that, first, the amount of judgment which could be entered herein for punitive damages against the defendant railroad company, being uniquely and exclusive within the sole discretion of the jury, could very easily exceed the sum of Ten Thousand Dollars ($10,000.00) under the cir-

cumstances of the case and, second, that consideration and hearing of the said case in the District of Columbia Court of General Sessions will not occur for at least two (2) years from this date, which delay is unfair and unduly burdensome to Plaintiffs when added to the three and one-half (3-1/2) years already elapsed since the time of the initial injuries.

/s/ Seymour Friedman
/s/ Irving L. Chasen
Attorneys for Plaintiffs

[Certificate of Service]

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION AND REVOCATION OF ORDER CERTIFYING CASE TO DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

1. Rule 7(b) F.R.C.P.

2. D.C. Code (1967 Ed.) Title 11, Sec. 962.

3. Compensatory damages are here sought for injuries, and pain and suffering, resulting from alleged assault and battery, in addition to compensatory damages for false arrest and imprisonment. Granting that no permanent injury is claimed here, and even that no substantial costs for medical services were incurred (no loss of earnings is involved since the injured party was and is a schoolboy), it is nonetheless submitted that, where it is alleged that a skull fracture, and months of severe headaches, were the direct result of the alleged assault, a substantial compensatory verdict could well be rendered by a jury, which alone might well approach the Ten Thousand Dollar ($10,000.00) base figure.

When there is added to this the possibility of an award for punitive damages, for wilful assault and injury, and false arrest and imprisonment, it seems clear that a total judgment far exceeding the Ten Thousand Dollar ($10,000.00) figure is a most reasonable prospect.

The award of punitive damages against a defendant is a matter uniquely within the authority and discretion of a jury to fix. By its very nature, it does not admit of an objective standard of determination. It is, rather, such sum as, in the judgment of the jury, would be sufficient both to punish the defendant for the commission of a malicious and outrageous invasion of the plaintiffs' rights, and, in light of the financial ability and stature of the defendant, to constitute an effective deterrent against repetitions of such conduct.

If the jury should find here that the defendant railroad callously and recklessly disregarded the rights of the minor plaintiff, in authorizing or ratifying the acts of its employees constituting assault, or arrest, or imprisonment, without just or reasonable cause, the jury could very readily indeed conclude, as against a corporation whose net earnings, after taxes, in 1966 exceeded Ninety Million Dollars ($90,000,000.00), and whose net assets at that time exceeded Three Billion Eight Hundred Million Dollars ($3,800,000,000.00), that a punitive damages judgment, in order to have any deterrent effect at all, would have to exceed Ten Thousand Dollars ($10,000.00) by a very substantial sum.

It is submitted that the reason behind Title 11, Section 962, the Code provision authorizing certification to the District of Columbia Court of General Sessions, is not the desire that the District Court substitute its judgment for that of a jury merely because, if the Court were actually the jury, it might evaluate the damages somewhat differently than would a jury. Rather it is the purpose of the rule that where, on the basis of a reasonably objective basis for determination of the award which might be made to a plaintiff, such amount would be excessive and unreasonable if it should exceed Ten Thousand Dollars ($10,000.00), that the District Court refer that case for hearing by the Court normally hearing such cases.

Here, there is no such objective basis for determination of the proper award to be made. There cannot be, without the full trial hearing of the witnesses, any basis for evaluation either of the degree and extent of pain and suffering warranting compensatory damages, or the extent of malice, ill will, and outrageous conduct warranting imposition of punishment and deterrence.

3. Upon consultation with the Clerk of the District of Columbia Court of General Sessions, Plaintiffs' Counsel was advised

that no accelerated or advanced consideration whatever is given, merely because of such certification, to a case certified from the United States District Court, but that instead it takes its place in normal order on the trial calendar as though filed there on the date of certification. In the present state of the jury trial calendar at that Court, it would be necessary therefore to anticipate that trial of the instant case would not occur earlier than two (2) years from the date of actual receipt of the file from the District Court and calendaring thereof.

It is submitted that an additional delay of more than two (2) years before trial of the issues herein, added to the three and one-half (3½) years already elapsed since the infliction of injuries involved herein is unwarranted and unfair to plaintiffs.

4. For all the foregoing reasons, plaintiffs respectfully request that the Court reconsider and revoke its Order herein certifying this case to the Court of General Sessions, and restore it to the District Court calendar for prompt trial.

Respectfully submitted,

/s/ Seymour Friedman

/s/ Irving L. Chasen

Attorneys for Plaintiffs

[Filed April 10, 1968]

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION AND REVOCATION OF ORDER CERTIFYING CASE TO DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

This case was certified to the District of Columbia Court of General Sessions on April 3, 1968 by virtue of the provisions of D.C. Code § 11,962 (1967).* The reason given by the District Judge was that, in his judgment, a verdict in excess of $10,000 would not be justified in this case.

1. Plaintiff attacks this ruling contending that compensatory and punitive damages could exceed $10,000.

Plaintiff contends that a jury could well render a verdict for compensatory damages that would approach $10,000. On the face of the record, however, this suggestion is a bit preposterous. Special damages in this case which are disputed total approximately $160. As plaintiff admits, there is no claim of permanent injury. Further-

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*In a civil action commenced in the United States District Court for the District of Columbia, other than an action for equitable relief, where it appears to the satisfaction of the court at or subsequent to any pretrial hearing but prior to trial thereof that the action will not justify a judgment in excess of $10,000, the court may certify the action to the District of Columbia Court of General Sessions for trial. The pleadings in the action, together with a copy of the docket entries and copies of any orders entered therein, and the deposit for costs, shall be sent to the clerk of the Court of General Sessions. Promptly thereafter, the Court of General Sessions shall set the case for trial. The Court of General Sessions shall thereafter treat the case as though it had been filed originally in that court, except that the jurisdiction of the court shall extend to the amount claimed in the action, even though it exceeds the sum of $10,000.

more, as plaintiff also admits, no loss of earnings is involved. Certainly, the alleged pain and suffering, which resulted in plaintiff's missing only several days of school, hardly could justify an award of $10,000.

It also seems extremely unlikely that an award of punitive damages against the railroad would result, or, if awarded, would exceed $10,000. It is settled law that a corporation, to be liable for punitive damages, must have authorized or ratified the acts of its employees giving rise to liability. In this case defendant has only ratified the arrest and detention of plaintiff which defendant contends in the circumstances its employees had a right to do as a matter of law. It has not ratified any assault and battery on the plaintiff by its employees. The record shows that defendant held hearings on the incident, hearings which would have been the basis for disciplinary action had an assault and battery been found. However, the defendant corporation was convinced by the hearings that there had been no assault and battery. Defendant can hardly be held to have ratified an assault and battery which it believes not to have taken place.

Furthermore, in this jurisdiction the law is that punitive damages should be awarded only as a deterrent and not as retribution against the offending party. Judge Holtzoff in *Collins v. Brown*, 268 F. Supp. 198 (1967) said:

> "The purpose of punishment, be it a criminal sentence, a civil penalty, or punitive damages, is not to inflict suffering or to impose a loss on the offender. Its object is to act as a deterrent: first to discourage the offender himself from repeating his transgression; and, second, to deter others from doing likewise. When punitive damages are awarded, they must indeed be large enough to act as an effective deterrent. They should not be any larger." 268 at 201.

Certainly, it is improper to award punitive damages against a corporation for any reason other than deterrence. To exact retribution from a corporation would be placing an undue burden on innocent shareholders. Defendant would have taken disciplinary action had it believed that the assault and battery had occurred. The holding of the hearings indicates this. It is therefore questionable whether the defendant corporation needs to be "deterred". Any punitive damages in this accordingly would be low.

Finally, it is extremely doubtful if punitive damages for the putative assault and battery would exceed $10,000 because of the severe nature of the provocation in this case. The record is plain that trainmen live in constant fear of stonings; numerous injuries, including loss and impairment of vision, have resulted from such incidents. It is settled law that provocation, even where it does not justify the assault and battery, is a factor to be weighed in mitigation of punitive damages and the jury must be so charged. Indeed, some jurisdictions hold that provocation is relevant concerning mitigation of compensatory damages. Considering the serious provocation in this case, substantial mitigation of damages, punitive and compensatory, undoubtedly would result.

If a jury were to award a verdict in excess of $10,000, it is plain that a remittitur would be in order. *Afro-American Publishing Co. v. Jaffee,* 125 U.S. App. D.C. 70 (1966); *Collins v. Brown, supra.*

2. Plaintiff contends that no acceleration of this case is available in the Court of General Sessions, that trial would not occur earlier than two years from the receipt of the file from the District Court and that, consequently, the District Court should retain jurisdiction of this case. To this contention, defendant responds with three points.

a. Plaintiff has a statutory right to a prompt trial in the Court of General Sessions. The statute declares that, after certification to the Court of General Sessions, that Court shall "[p]romptly . . . call the case for trial." The remedy in this case, therefore, is an appropriate motion in the Court of General Sessions seeking the statutory right of a prompt trial. It is hardly a suitable remedy to ask the District Court to forego the responsibility placed upon it by the statute to transfer the case in appropriate circumstances in order to ameliorate a situation which exists because the Court of General Sessions is not complying with the mandate of the statute. The defendant will consent to a motion for a prompt trial in the District of Columbia Court of General Sessions.

b. If the claim for relief justifiably cannot exceed $10,000, the matter is one for the Court of General Sessions and the District Court has no jurisdiction. See D.C. Code §§ 11-521, 11-961 (1967).

c. If this case had initially been brought in the Court of General Sessions where it belongs, trial by now would have been held or at least be imminently pending. If delay will now result, it is the fault of the plaintiff. It has been occasioned by plaintiff's improperly bringing a case with an outlandish claim ($1,000,000 for punitive damages) in the District Court. If the Court of General Sessions does not fulfill its statutory responsibility some delay may result, but it can hardly be suggested that this Court abdicate its responsibilities because plaintiff has made the quite obvious mistake of bringing his action in the wrong forum.

3. Certainly, the action of the District Judge does not contravene the principles controlling certification as laid down in the reported cases. *See, e.g., Gray v. Evening Star Newspaper Co.*, 107 U.S. App. D.C. 292 (1960); *Melton v. Capital Transit Co.*, 102 U.S. App. D.C. 306 (1958); *Barnard v. Schneider*, 100 U.S. App. D.C. 153 (1957).

4. For reasons stated above, defendant requests that plaintiff's motion be denied.

Respectfully submitted,

/s/ Paul F. McArdle

/s/ James Hamilton

Attorneys for Defendant

[Certificate of Service dated 10th day of April, 1968.]

[Filed April 11, 1965]

PLAINTIFFS' MEMORANDUM IN REBUTTAL OF DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION AND REVOCATION OF ORDER CERTIFYING CASE TO DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

1. Defendant's memorandum in opposition to the motion for revcation of the order herein certifying this case to the Court of General Sessions urges as fact many points as to which serious question exists.

Principally this is so with respect to the issue of ratification by the corporate defendant of the improper acts of its employees. Admittedly, the defendant has ratified the plaintiff's arrest and detention. But whether such arrest and detention were proper is the basic issue in the case, and for purposes of the instant motion, should be viewed in the light most favorable to plaintiff. And whether or not ratification can be held to have been avoided by the mere act of the defendant in failing to secure the full factual picture of the case, that is, by a mere unilateral "hearing" where only the employees were heard, is a suggestion which seems highly questionable.

In any event, if a jury should find the arrest and detention were not justified,this alone would warrant an award of punitive damages against the ratifying employer. And it can be seriously doubted that that a verdict of less than $10,000.00 would have the deterrent effect desired even under defendant's view of the law, upon a company whose earnings after taxes run well into 90 millions of dollars. At least, we submit a jury could well doubt the likelihood of such a deterrent effect.

Finally, even assuming the existence of alleged "provocation" in that the employees live in constant fear of injury, which is not necessarily the case here, it is submitted that provocation to serve

in mitigation of damages must flow from the person who suffered the damages. The employees and defendant cannot be heard to justify their improper actions against an innocent 14-year old boy, if the jury should so find, on the basis of a fear caused by others. Such an alleged basis for reduction of damages would indeed permit of monstrous miscarriages of justice.

There is clearly no mandatory basis here on which a failure to grant a remittitur would be an abuse of the trial court's discretion, if a verdict should be returned in excess of $10,000.00, such as $15,000.00 or $25,000.00, or even more.

2. Defendant also urges that the mere fact that trial in General Sessions is likely to be delayed for more than two years is irrelevant.

But the defendant ignores the fact that the certification procedure is not mandatory, but discretionary. It is submitted that the likelihood of undue and unwarranted delay can and should be considered by the Court, and that, where present, it should be taken to limit the exercise of discretion to those cases only in which it is abundantly clear that no basis whatever exists for a verdict in excess of $10,000.-00 and hence where such a verdict would necessarily be erroneous.

Here it is clear that no such clarity can be said to exist.

Accordingly, for all the reasons herein and heretofore stated, plaintiffs respectfully urge the Court to revoke its within order of certification and restore this case for prompt trial in the District Court.

Respectfully submitted,
/s/ Seymour Friedman
/s/ Irving L. Chasen
Attorneys for Plaintiffs

[Certificate of Service]

[Filed April 16, 1968]

NOTICE OF APPEAL

Notice is hereby given this 16th day of April, 1968, that Langston Hughes, et al., plaintiffs, hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 3rd day of April, 1968 in favor of Defendant Pennsylvania Railroad Company against said Plaintiffs, certifying the instant case tothe District of Columbia Court of General Sessions for trial therein, and from the Order of April 10, 1968 denying Plaintiffs' Motion for Reconsideration and Revocation of said Order of Certification.

/s/ Seymour Friedman
/s/ Irving L. Chasen
Attorneys for Plaintiffs

[Certificate of Service]

BRIEF FOR APPELLANTS

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,934

LANGSTON HUGHES, *et al.*,

Appellants

v.

PENNSYLVANIA RAILROAD COMPANY,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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QUESTION PRESENTED

Where damages are sought for unwarranted and unjustified assault and battery, false arrest, and false detention and imprisonment, committed on the person of a 14-year-old boy by employees of appellee-railroad, resulting in severe, though non-permanent, injuries including an alleged skull fracture, and punitive damages are also sought on the ground that the appellee-railroad ratified and approved the wrongful actions of its employees, did the District Court properly find that the facts would not justify a total verdict in excess of $10,000 so as to authorize certification for trial to the Court of General Sessions under D. C. Code, Title 11, § 962, when the appellee admitted the arrest and detention, though asserting they were justified by the trespass of appellant, and its employees admitted having had physical contact with appellant severe enough to cause bleeding, when the Court improperly took into consideration, at least in part, whether appellants could establish the alleged ratification by the appellee of its employees' wrongful acts, and when the certification took place on the very day set for trial with both parties ready therefor.

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IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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LANGSTON HUGHES, *et al.*,

Appellants

v.

PENNSYLVANIA RAILROAD COMPANY,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

The Complaint herein sought judgment for compensatory and punitive damages in favor of plaintiffs-appellants against defendant-appellee for injuries suffered by appellants as a result of assault and battery, false arrest, and false detention and imprisonment committed upon the person of the minor plaintiff-appellant by employees

and servants of the appellee. This appeal is taken from the order of visiting District Judge Edward J. McManus certifying the cause for trial to the District of Columbia Court of General Sessions (J.A. 75).

The Court has jurisdiction of this appeal under the Act of April 1, 1942, c. 207, § 5, 56 Stat. 193, as amended by Act of June 29, 1953, c. 195, § 410, 67 Stat. 108, Act of July 26, 1956, c. 744, § 1, 70 Stat. 676, Act of October 23, 1962, Pub. L. 87-873, § 3, 76 Stat. 1171, and Act of July 8, 1963, Pub. L. 88-60, § 3, 77 Stat. 78, D.C. Code (1967 Ed.), Title 11, § 962; *Barnard v. Schneider, et al.*, 243 F.2d 258, 100 U.S. App. D.C. 152 (1957).

STATEMENT OF CASE

The complaint herein alleged that, on September 21, 1964, the minor plaintiff-appellant, Langston Hughes, then fourteen years of age, while crossing the railroad tracks of defendant-appellee near Kenilworth Avenue and Grant Street, N.E., on a path which, though privately owned, was frequented by the general public, was attacked from the rear, beaten, and kicked by employees of appellee, without cause, justification or warning. (J.A. 4) The complaint further alleged that, following said unwarranted attack, the minor appellant was forced to board the appellee's freight train from which said employees had descended, was taken thereon against his will to the appellee's offices nearby, and was there detained and compelled to remain until he was taken by another employee of appellee to the No. 14 Precinct Police Station of the District of Columbia, from which he was later released in custody of his mother, the other appellant herein (J.A. 4, 5)

As compensation for the injuries so inflicted upon him, and for his unwarranted arrest and detention, and medical costs incurred as a result thereof, damages of One Hundred One Thousand Five Hun-

dred Dollars ($101,500.00) were sought by both appellants; and in addition, punitive damages in the total sum of One Million Fifty Thousand Dollars ($1,050,000.00) were demanded. (J.A. 5)

After answer, in which appellee coupled denial of the essential allegations of the complaint with the defense that the acts of its employees were justified because the minor appellant was a trespasser (J.A. 10), the deposition of the minor appellant was taken by appellee, and depositions of four of the appellee's employees involved in the incident were taken by appellant. (J.A. 13, 19, 42, 50, 63)

Pretrial was had of the cause, and, on April 2, 1968, the case was called for trial before visiting District Judge Edward J. McManus.

Informal discussions among the Court and counsel for both parties were held in the Court's chambers during the morning of April 2, 1968, to consider the possibilities of amicable settlement and disposition of the case. At the same time, the Court advised counsel that, because of prior obligations for that afternoon, the trial could not begin before the following morning, April 3, 1968. During the course of the discussions, counsel for both parties briefly outlined their respective contentions and summarized their differing views of the essential facts. At the conclusion of the meeting, and it appearing that settlement was not then likely, appellee's counsel indicated that he felt this was a proper case for certification, under D.C. Code (1967 Ed.) Title 11, § 962, to the District of Columbia Court of General Sessions, and that he intended to request the Court to act accordingly.

No argument was then held on the request, and, no reporter being present, no record or transcript of the discussions or of the request was made or is available. The Court said that he was aware of the certification procedure, and indicated his inclination at that time to deny the request, but stated that he would study the matter

further and advise of his reaction on the following morning, April 3, 1968, and that both sides should be prepared to begin trial at that time.

On April 3, 1968, the Court and counsel again met in chambers, and again without a reporter present. After being advised by counsel, in response to his inquiry, that no further progress had been made toward out-of-court settlement, the Court stated he had decided to certify the case, as requested the preceding day. The court indicated, as a basis for his conclusion, that he felt an award of damages in the case would not exceed Ten Thousand Dollars ($10,000.00), and also that he was concerned whether appellants could establish ratification by appellee of its employees' actions, however wrongful they might be. Although objection to the decision was promptly indicated by appellants' counsel, no argument in the matter was had at that time, of record or otherwise, and an order of certification was entered by the Court.

On April 5, 1968, appellants filed a motion for reconsideration and revocation of the order of certification (J.A. 75), requesting opportunity for oral argument thereon. On April 10, 1968, appellee filed its memorandum in opposition, serving a copy by mail upon appellants (J.A. 80); and on that same day, April 10, 1968, the Court, by fiat entry, denied appellants' motion. (J.A. 3) Upon receipt, on April 11, 1968, of appellee's opposition memorandum, and without knowledge that their motion had already been denied by the Court, appellants that same day prepared and filed a memorandum in rebuttal of appellee's opposition (J.A. 85), which of course could not be and was not considered by the Court in reaching its conclusion to deny the motion.

This appeal followed. (J.A. 87).

STATEMENT OF POINTS

1. The Court below improperly concluded that the nature of damages, both compensatory and punitive, for false arrest, false imprisonment, and assault and battery here sought against a wealthy corporate defendant in order to secure compensation for and deter repetition of the alleged improper actions of its employees would not readily justify a verdict in excess of $10,000.

2. The Court improperly took into consideration whether or not appellant could establish that appellee had ratified its employees' wrongful actions, without either evidence or basis in fact before it to ground even a question with respect thereto, instead of, as properly should have been done, accepting as true for purposes of the issue, all facts properly alleged by appellants and giving appellants the benefit thereof.

3. No opportunity for argument was given on the merits of such certification under all the circumstances of the case, including the fact that such certification, on the very day set for trial, would not further the purposes of the statutory certification procedure.

4. The Court failed to consider the further substantial delay, and consequent hardship to appellants certain to result from certification for trial to the Court of General Sessions, in light of that Court's crowded calendar.

SUMMARY OF ARGUMENT

1. Though no explicit standard of judgment is set out in the Code, a District Court cannot act arbitrarily, or for the wrong reasons to certify a case for trial to the General Sessions Court on the purported basis that it would not justify a verdict in excess of $10,000.

(a) Damages for physical injury, including alleged skull fracture, pain, shock, and suffering, suffered by a 14-year-old boy, from a wilful and unwarranted assault and battery, by a grown adult man, even though no permanent injury was caused, and only moderate medical costs incurred, coupled with damages for infliction of false arrest and imprisonment, could readily equal or exceed $10,000.

(b) Punitive damages against a multi-billion dollar corporation, which allegedly approved and ratified the wrongful assault, battery, arrest and imprisonment of appellant by its employees, could readily far exceed $10,000.

2. On the facts and issues herein, a jury verdict in excess of $10,000, after full trial, would not necessarily be subject to being set aside or remittitur, unless so far in excess thereof as clearly to be motivated by prejudice. Accordingly, the certification was improper and an abuse of discretion.

3. The District Court erred in considering the question of ratification, or employer-appellee liability for punitive damages for its employees' improper actions, particularly in light of the clear evidence of such ratification of, if not express direction for, the arrest and detention and imprisonment of appellant.

4. The certification here, more than three years after filing of the case, and on the very day scheduled for beginning of trial for which both parties were fully ready, did not contribute to a reduction of the backlog or case burden of the District Court, or contribute to avoidance of the problems of delayed justice.

5. The failure of the Court below to permit oral argument prevented full consideration, and perhaps better resolution, of the issues here presented, and prevented creation of a better and more complete record for consideration here.

ARGUMENT

1. Though no explicit standard of judgment is set out in the Code, a District Court cannot act arbitrarily, or for the wrong reasons to certify a case for trial to the General Sessions Court on the purported basis that it would not justify a verdict in excess of $10,000.

The action taken by the District Court here, certifying this action for trial to the Court of General Sessions, is based on Section 962, Title 11, of the D.C. Code, which provides in relevant part:

> "In a civil action commenced in the United States District Court for the District of Columbia, other than an action for equitable relief, *where it appears to the satisfaction of the court . . . that the action will not justify a judgment in excess of $10,000,* the court may certify the action to the District of Columbia Court of General Sessions for trial." (Emphasis supplied)

No specific basis for determination whether an action will "justify" a judgment is set out in the statute, and no standard other than the "satisfaction" of the District Judge making the determination.

The provision in question, which is understandably unique in Federal judicial procedures, was first enacted in 1942, in order to assist in relieving the District Court for the District of Columbia, then vested with exclusive and original jurisdiction of all claims in excess of $3,000.00, of a burden and backlog of pending cases which was a "scandal" (S. Rep. No. 1116, to accompany H.R. 5784, 77th Congress, 2d. Sess.). It then authorized the District Court to certify an action to the Municipal Court when the District Court was satisfied the action would not justify a judgment in excess of $1000, though the jurisdiction of the lower court extended up to $3000. Act of April 1, 1942, c. 207, § 5, 56 Stat. 193. Recognizing this anomalous situation, the Code provision was amended in 1956 to permit certification to the

lower court in any cases where it was found the action would not justify a judgment in excess of $3,000, the Court's jurisdictional limit. Act of July 26, 1956, c. 744, § 1, 70 Stat. 676. And the provision was again amended in 1963 to permit certification up to the sum of $10,000, the newly-established jurisdictional limit of the Court of General Sessions. Act of July 8, 1963, P.L. 88-60, § 3, 77 Stat. 78.

While the statute sets out no standard of judgment other than that it appear to the "satisfaction" of the District Court that a judgment in excess of $10,000 would not be justified, it is nonetheless clear that the Court cannot act arbitrarily, or for incorrect or improper reasons. *Gray v. Evening Star Newspaper Co.*, 277 F.2d 91, 107 U.S.App.D.C. 292, 293 (1960); *Davis v. Peerless Insurance Co.*, 255 F.2d 534, 103 U.S.App.D.C. 125, 127 (1958). It is also clear that it is improper for the District Court to weigh or make comparative evaluations of the evidence or claims in the case in connection with consideration of possible certification. *Gray v. Evening Star Newspaper Co., supra.* It is, rather, incumbent upon the Court to accord to the claims and evidence adduced by appellants at this stage of the case, without opportunity for full hearing, all usual assumptions of truth, barring their inherent incredibility or bad faith.

(a) Damages for physical injury, including alleged skull fracture, pain, shock, and suffering, suffered by a 14-year-old boy, from a wilful and unwarranted assault and battery, by a grown adult man, even though no permanent injury was caused, and only moderate medical costs incurred, coupled with damages for infliction of false arrest and imprisonment, could readily equal or exceed $10,000.

It is submitted that the facts already of record in support of appellants' claims clearly demonstrate that the Court erred in concluding that the action would not justify a judgment in excess of $10,000.

Thus, appellants allege that assault and battery, false arrest, and false detention and imprisonment, were inflicted wilfully and with-

out cause upon the minor appellant by employees of appellee, that severe physical injuries were inflicted, and that these actions were ratified and approved by the appellee.

Appellee denies the assault and battery, though the employees themselves clearly admit that a physical contact, allegedly by falling, was made between employee Ruby and the minor appellant (J.A. 29, 30, 31, 32, 66); and that appellant's head was injured and bleeding (J.A. 31, 41, 45, 69). And appellee admits the arrest and detention (J.A. 6), but asserts that they were justified because the appellant was a trespasser. (J.A. 10).

On the other hand, the appellant himself testifies that he was wilfully struck, kicked and beaten, not only by Ruby, but by the other employees at the scene (J.A. 14, 15, 16, 17); and whether the arrest and detention were proper or improper is a basic issue in the case, and even whether the appellant was a trespasser in view of the clear long-continued use, known and presumably approved by appellee (J.A. 18, 25, 57, 58, 65, 69), of the path across the tracks on which appellant was crossing.

The depositions and other evidence before the Court clearly permitted it to find that appellants' allegations were true, and that evidence must be given the interpretation most favorable to appellants in the present posture of the case. It was not within the province of the Court, even assuming it had studied the voluminous depositions, to weigh the testimony (*Gray v. Evening Star Newspaper Co., supra*); rather, it was compelled to give to appellant the benefit of any inferences reasonably to be drawn therefrom.

In light of these clear facts, it is necessary to examine the scope of the damages here sought, and the reasonableness of a conclusion that a total award in excess of $10,000 woud not be justified and hence warrant certification by the Court.

Compensatory damages are here sought for injuries, including a skull fracture, and pain and suffering, resulting from the alleged assault and battery, in addition to compensatory damages for false arrest and imprisonment. Granting that no permanent injury is claimed here, and even that no substantial costs for medical services were incurred (no loss of earnings is involved since the injured party was and is a schoolboy), it is nonetheless submitted that, where it is alleged that a skull fracture, and months of severe headaches, were the direct result of the alleged assault, plus mental shock and pain from the unwarranted detention, indeed virtual kidnapping, of a young boy, a substantial compensatory verdict could well be rendered by a jury, which alone might approach or even exceed the crucial $10,000 figure.

(b) Punitive damages against a multi-billion dollar corporation, which allegedly approved and ratified the wrongful assault, battery, arrest and imprisonment of appellant by its employees, could readily far exceed $10,000.

When there is added to this the possibility of an award for punitive damages, for wilful assault and injury, and false arrest and imprisonment, it seems clear that a total judgment far exceeding the $10,000 figure is a most reasonable prospect.

The award of punitive damages against a defendant is a matter uniquely within the authority and discretion of a jury to fix. By its very nature, it does not admit of an objective standard of determination. It is, rather, such sum as, in the judgment of the jury, would be sufficient both to punish a defendant for the commission of a malicious and outrageous invasion of a plaintiff's rights, and, in light of the financial ability and stature of the defendant, to constitute an effective deterrent against repetitions of such conduct. *Chesapeake & Potomac Tel. Co. v. Clay*, 194 F.2d 888, 90 U.S.App.D.C. 206, 209 (1952); *Mt. Vernon & M.H.S. Co. v. McKenney*, 46 App.D.C.

99, 114 (1917); *Woodward v. Ragland*, 5 App.D.C. 220, 23 W.L.R. 81 (1895); *Levine v. Mills*, 114 A.2d 546, 549 (D.C.Mun.App. 1955).

If the jury should find here that the appellee railroad callously and recklessly disregarded the rights of the minor appellant, in authorizing or ratifying the acts of its employees constituting assault, or arrest, or imprisonment, without just or reasonable cause, the jury could very readily indeed conclude, as against a corporation whose net earnings, after taxes, in 1966 exceeded $90,000,000, and whose net assets at that time exceeded $3,800,000,000,
that a punitive damages judgment, in order to have any deterrent effect at all would have to exceed $10,000 by a very substantial sum.[1]

2. **On the facts and issues herein, a jury verdict in excess of $10,000, after full trial, would not necessarily be subject to being set aside or remittitur, unless so far in excess thereof as clearly to be motivated by prejudice. Accordingly, the certification was improper and an abuse of discretion.**

Admittedly, on the facts here involved, as indeed in any case, and particularly a case involving a young boy allegedly assaulted by a grown man, a jury might grant an excessive verdict which would warrant, or require, being set aside, or remitted. But it can hardly be said that *any* sum whatever in excess of $10,000 which might here be granted by a jury would impose compulsion upon the Court for reversal thereof.

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[1] The above data are derived from the 1966 Annual Report of The Pennsylvania Railroad Company, which had been agreed by counsel for both parties would be stipulated as establishing the financial worth of the appellee for consideration by the jury in connection with its determination of punitive damages. *Cf. Chesapeake & Potomac Tel. Co. v. Clay*, *supra*; *Levine v. Mills*, *supra*.

Certainly, there is here no "legal certainty" that the claim would not warrant a judgment in excess of $10,000 so that a remand of the case to a State court had it initially been instituted there would be compelled; nor is there any claim or showing that the sums sought as damages here are sought in bad faith, or collusively, solely to satisfy jurisdictional requirements, so as to warrant dismissal for lack of jurisdiction. *Cf. St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 289, 82 L. Ed. 845, 848 (1938).

It is not contended by appellants that the certification statute requires findings by the Court equal to those grounding jurisdiction or lack thereof, though the sparse legislative history of the provision affords clear indication that the maintenance of the jurisdictional separation between the District and Municipal Courts was thought to be aided by the provision.[2]

But, it is respectfully submitted, a standard of judgment more objective than "satisfaction" of a Court which is not "arbitrary" is proper and necessary here. At the minimum, it should be measur-

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[2]The House of Representatives District of Columbia Committee, reporting the 1956 amendment which expanded the scope of the certification procedure to coincide with the jurisdictional limits of the District and Municipal Courts, set out and adopted as its rationale a letter from the Judicial Conference recommending the change (H.R. Rep. No. 2178, to accompany H.R. 8149, 84th Cong., 2d. Sess.), which included the following:

> "Civil jurisdiction of the Municipal Court for the District of Columbia now extends to matters involving not more than $3,000. The existing statute, in effect, requires, that actions originally filed in the District Court must be tried in the District Court, when it appears that the action will justify a recovery of more than $1,000 and less than $3,000, although the Municipal Court has exclusive jurisdiction of this type of case by statute. Dual jurisdiction of this nature should be corrected wherever possible."

able in terms of the standard applicable to the Court's right to override a jury verdict on a factual matter normally within its purview.

Thus, when a Court has heard all the evidence, and then it appears that the jury's verdict was excessive and motivated by prejudice, the Court would be warranted in granting judgment n.o.v., or a new trial, or a remittitur. Similarly, a Court could be required before trial, to apply to the evidence proposed and expected to be adduced, after giving to both parties all the presumptions of truth normally applicable, the same standards of evaluation. Only if, on such an approach, the Court would be justified in concluding that an award in excess of $10,000, if made, would be so excessive as to warrant judgment n.o.v., a new trial, or a remittitur, should it be permitted to certify the case for trial to the lower court.

On such a standard, it is submitted, no basis exists to justify a conclusion that *any* verdict over $10,000, however small, would be excessive; and hence, no basis for certification properly appeared.

3. **The District Court erred in considering the question of ratification, or employer-appellee liability for punitive damages for its employees' improper actions, particularly in light of the clear evidence of such ratification of, if not express direction for, the arrest and detention and imprisonment of appellant.**

It is, of course, clear that the only basis for consideration whether or not certification was proper must relate to the amount of a possible or probable verdict. It cannot be grounded in consideration whether the action properly lies, or whether it can be established. These are grounds for other remedies available to a defendant. *Cf. Davis v. Peerless Insurance Co., supra.*

Accordingly, the error here is both emphasized and compounded by the consideration given to and reliance placed by the Court upon

the issue of ratification by the employer-appellee of its employees' alleged wrongdoing. Not only does this deny to the appellants the benefit of the normal assumption that he can prove his essential allegations, so long as they are not inherently incredible, but it ignores the clear and uncontradicted evidence from which such ratification, if not actual direction and approval, by the employer could be inferred.

Thus, all the employees involved were called for hearing by the defendant-employer relative to the incidents here involved, or submitted written statements thereon (J.A. 9),[3] and all were retained in service thereafter, without reprimand, punishment, warning, or loss of seniority or status. The fact that, at such hearings, no effort was made by the appellee to secure the statements or ascertain the complaints of the appellants against which to evaluate the employees' statements, it seems obvious, cannot nullify the clear ratification of the employees' actions resulting from the appellee's failure even to discipline the employees after its knowledge of involvement of any kind in the incidents in question. Moreover, it appears from the depositions that at least two of the employees here involved had previously made strenuous efforts to arrest and detain other boys in similar circumstances, of which the appellee-employer was aware, and that the appellee never reprimanded them or instructed them to act differently thereafter (J.A. 35-38, 71-72), even though their superior stated his opinion that their actions in so doing were wrongful (J.A. 62, 63). And the testimony of one of appellee's employees that he was expressly directed by his superior to detain and bring the appellant to appellee's office goes beyond even the question of subsequent ratification (J.A. 67, 68), and brings at least the acts taken pursuant thereto, namely the admitted arrest and deten-

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[3]Reports of these hearings or statements were made available to appellants after motion for their production, later withdrawn, was made by them.

tion of appellant and placing him aboard appellee's train, within the direct scope of such employee's employment.

On the ground of this error alone, the action of the court below was improper, and should be overturned.

4. **The certification here, more than three years after filing of the case, and on the very day scheduled for beginning of trial for which both parties were fully ready, did not contribute to a reduction of the backlog or case burden of the District Court, or contribute to avoidance of the problems of delayed justice.**

It should be borne in mind that the order here was entered on the very day on which trial was to start, for which trial both parties were fully prepared. Certification at this late hour, however permissible it might have been on purely legal grounds, was itself an abuse of the Court's discretion, and an unnecessary wasting of time both of the Court and the parties; and certainly did not result in a real reduction or disposition of the backlog and burden of District Court cases which is one of the primary purposes of the statute. On the contrary, the imposition upon the parties, and particularly upon the appellants who had initiated their remedial action promptly after the alleged injury, of an additional lengthy delay before possible trial in General Sessions Court, as pointed out to the District Court in appellants' Motion for Reconsideration of its order (J.A. 75), can only exacerbate the very problem of unduly delayed justice which the statute was designed at least partially to remedy.

5. **The failure of the Court below to permit oral argument prevented full consideration, and perhaps better resolution, of the issues here presented, and prevented creation of a better and more complete record for consideration here.**

In light of all these factors, too, the failure of the Court, at the time of issuance of its order, and thereafter, despite the express request made with appellants' Motion for Reconsideration, to afford opportunity for oral argument, so as to provide both full consideration of all issues and creation of a record thereon, itself approaches the outer limits of the Court's discretion, however much it might, in normal course, be legally proper.

For all the foregoing reasons, it is respectfully submitted the order of the Court below was erroneous, and should be reversed and set aside; and this cause remanded for prompt trial in the District Court.

Respectfully submitted,

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BRIEF FOR APPELLEE

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,934

LANGSTON HUGHES, et al.,

Appellants

v.

PENNSYLVANIA RAILROAD COMPANY,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Pennsylvania Railroad Company

QUESTION PRESENTED

Whether the District Judge abused his discretion in certifying this case to the District of Columbia Court of General Sessions on the grounds that the cause of action did not justify a verdict in excess of $10,000 where there was no permanent injury involved and special damages, by Appellants' own claims, totaled only $161.90, where the minor plaintiff was on Appellee's property at the time of the incident and allegedly was throwing stones at Appellee's engine, and where the record shows no ratification of any employee action except the arrest and detention of the minor plaintiff.

(This matter previously has not been before this Court.)

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Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appelle accepts the Appellants' statement of the case subject to the following additions and exceptions.

The record shows that immediately before the minor plaintiff was apprehended by Appellee's employees,

the engine in which the employees were riding was hit by several stones and that one of the windows in the engine was broken. While the minor plaintiff denies throwing the stones, it is the unequivocal testimony of Appellee's employees that the minor plaintiff was one of two boys throwing stones at the engine.

The minor plaintiff suffered only slight injuries. Special damages for hospital bills total only $161.90.by Appellants' own claims.

On April 2, 1968, when Appellee's counsel moved to certify the case to the Court of General Sessions, there was a full discussion of the matter in the chambers of District Judge Edward J. McManus.

Appellee's attorneys have no recollection that Judge McManus gave as a reason his certifying the case his concern whether Appellants could establish ratification of employee actions by Appellee.

STATUTES INVOLVED

District of Columbia Code, Section 11-962 (1967), reads as follows:

> "In a civil action commenced in the United States District Court for the District of Columbia, other than an action for equitable relief, where it appears to the satisfaction of the court at or subsequent to any pretrial hearing but prior to trial thereof that the action will not justify a judgment in excess of $10,000, the court may certify the action to the District of Columbia Court of General Sessions for trial. The pleadings in the action, together with a copy of the docket entries and copies of any orders entered therein, and the deposit for costs, shall be sent to the clerk of the Court of General Sessions. Promptly thereafter, the Court of General Sessions shall call the case for trial. The Court of General Sessions shall thereafter treat the case as though it had been filed originally in that court, except that the jurisdiction of the court shall extend to the amount claimed in the action, even though it exceed the sum of $10,000."

District of Columbia Code, Section 11-961 (1967), reads in pertinent part:

> "In addition to other jurisdiction conferred upon it by law, the District of Columbia Court of General Sessions has exclusive jurisdiction of civil actions, including civil actions against executors, administrators and others [sic] fiduciaries, in which the claimed value of personal property or the debt or damages claimed does not exceed the sum of $10,000, exclusive of interest and costs, as well as of all crossclaims and counterclaims interposed in all actions over which it has jurisdiction, regardless of the amount involved."

District of Columbia Code, Section 11-521 (1967), reads in pertinent part:

> "Except in actions or proceedings over which exclusive jurisdiction is conferred by law upon other courts in the District, the United States District Court for the District of Columbia, in addition to its jurisdiction as a United States district court and to any other jurisdiction conferred by law, has all the jurisdiction possessed and exercised by it on January 1, 1964, and has original jurisdiction of all:
>
> > "(1) civil actions between parties, where either or both of them are resident or found within the District;"

SUMMARY OF ARGUMENT

The District Judge has broad discretion in certification matters. This discretion was not abused when the District Judge transferred this case to the Court of General Sessions. Compensatory damages in this case would be negligible. Special damages total only $161.90. There is no claim of permanent injury. It is doubtful if punitive damages would result; if punitive damages were awarded, they would be low. The record shows that appellee corporation ratified only the apprehension and the detention of the minor plaintiff which its employees had a right to do under the circumstances. Furthermore, punitive damages should only be awarded for deterrent purposes, not as punishment. Appellee held hearings on this incident. Disciplinary action would have resulted had assault and battery been found and it is doubtful if Appellee needs to be further deterred. Moreover, the stoning of the engine was severe provocation which would be considered in mitigation of punitive damages, and perhaps compensatory damages.

Appellants' suggestion that the District Court should use the standards for judgment n.o.v., new trial and remittitur in the certification determination is

erroneous, confusing and unworkable. The suggested standard is contrary to the wording of the statute and to the case law. The standard is confusing since judgment n.o.v., new trial and remittitur, themselves, have varying functions and are controlled by different tests. Furthermore, the considerations which underlie these three judicial devices are different from the considerations which resulted in enactment of the certification statute.

Certification on the day of the trial was not an abuse of discretion since the matter had been initially raised with the Pretrial Examiner and since the wording of the statute authorizes certification at any time prior to trial. Appellants have a statutory right to prompt trial in the Court of General Sessions. Any delay which may result is occasioned by the Appellants' bringing their action in the wrong forum.

Full discussion on the motion to certify was had before the District Judge in his chambers on the day of the trial and the denial of further oral argument was not an abuse of discretion.

ARGUMENT

I. The District Judge Did Not Abuse His Discretion In Certifying This Case To The Court of General Sessions

As this Court has consistently reaffirmed, it is fundamental that a District Judge is vested with "broad discretion" concerning certification by the language of the District of Columbia statute and that a certification order will not be overturned unless a clear abuse of discretion is apparent. Gray v. Evening Star Newspaper Co., 107 U.S. App. D.C. 292, 277 F.2d 91 (1960); Davis v. Peerless Insurance Co., 103 U.S. App. D.C. 125, 255 F.2d 534 (1958); Melton v. Capital Transit Co., 102 U.S. App. D.C. 306, 253 F.2d 42 (1958); Barnard v. Schneider, 100 U.S. App. D.C. 152, 243 F.2d 258 (1957). In the Gray case this Court set out guidelines for the District Court in certification determinations:

> "In deciding whether to retain or certify a case to the Municipal Court, the District Court should act on the basis of the data presented under the Rules by the parties prior to trial, including the pretrial hearing. But a comparative evaluation of conflicting evidence is not part of the function of the Court at that stage of the litigation . . . ." 107 U.S. App. D.C. at 293.*/

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*/ Appellants contend that, in the certification determination, they should be given the assumption that they can prove their essential allegations. (E.g., Appellants'

(Footnote continued)

There is no indication that the District Judge followed procedures other than those outlined in Gray in certifying the present case to the Court of General Sessions. Certainly, the certification order itself (JA 75) implies nothing to the contrary. Furthermore, as demonstrated below, the record contains sufficient undisputed facts upon which to base such a determination.

A. The District Judge Did Not Abuse His Discretion In Determining That, On The Record, A Verdict Of Ten Thousand Dollars For Compensatory Damages Would Not Be Justified

The claim that compensatory damages would exceed $10,000, on the basis of the record, is quite unfounded; indeed, it is preposterous. Special damages in this case, (which are disputed by Appellee) total only $161.90 by Appellants' own claims (JA 12).*/ Furthermore, there is

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(Footnote continued)

Brief, pp. 8, 14). But nothing in the statute or the decided cases warrants this conclusion; indeed the Gray case indicates the contrary. Granting plaintiffs such assumption would militate against the judge's broad discretion. The judge, in his discretion, should allow the assumptions he sees fit. Even if Appellants here are granted all assumptions, Appellee contends that there was no abuse of discretion in deciding that this matter would not justify an award of $10,000. (See further the discussion in Section II, this brief.)

*/ At the time the Gray case was decided, $3,000 was the certification standard. Special damages in Gray totaling $1,000 were claimed. Yet this Court held that certification was not an abuse of discretion.

no claim of permanent injury in this case (Appellants' Brief, p. 10). There is no claim for lost earnings (Appellants' Brief, p. 10). The alleged pain and suffering for minor injuries (e.g., JA 31, 43, 68) hardly could justify a compensatory award of $10,000. That the District Judge did not abuse his discretion as to compensatory damages is patently clear.

B. The District Judge Did Not Abuse His Discretion In Determining That, On The Record, A Verdict Of Ten Thousand Dollars For Punitive Damages Would Not Be Justified

It is highly unlikely that an award of punitive damages against the railroad would result or, if it did, that the award would exceed $10,000. It is fundamental that a corporation, to be liable for punitive damages, must have authorized or ratified the acts of its employees giving rise to liability.*/ The leading case is Lake Shore Ry. Co. v. Prentice, 147 U.S. 101 (1893). The

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*/ Appellants contend that the District Judge erred in placing great reliance on lack of ratification. (Appellants' Brief, p. 13-15). But there is absolutely nothing in the certification order (JA 75) which indicates what was the basis for the determination that the cause would not justify an award in excess of $10,000. However, had the District Judge relied on lack of ratification, such reliance would not have been improper. In considering what would be a justifiable verdict, a judge must take into consideration applicable principles of law. Certainly, the charge to the jury, which would obviously have a bearing on the amount of the verdict, would be phrased with a mind to relevant legal standards.

(Footnote continued)

record only shows ratification of the arrest and detention of the minor plaintiff which the railroad contends its employees, in the circumstances, had a right to do as a matter of law.*/ The record indicates that the railroad held hearings on the incident. (E.g., JA 9, 40-41). Had an assault and battery been found, disciplinary action would have resulted. The railroad cannot be held to have ratified an assault and battery it believes not to have taken place.

Moreover, the caveat that punitive damages should be awarded only as a deterrent and not as retribution supports the railroad's contention that the District Judge did not abuse his discretion in certifying this matter to the Court of General Sessions. Judge Holtzoff in Collins v. Brown, 268 F. Supp. 198 (1967), said:

> "The purpose of punishment, be it a criminal sentence, a civil penalty, or punitive damages, is not to inflict suffering or to impose a loss on the offender. Its object is to act as a deterrent: first to discourage

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(Footnote continued)

Of course, certification is improper if, as in Davis v. Peerless, supra, a judge relies on an erroneous conception of the law, but that would not have been the case here.

*/ It should be noted that there is a dispute as to whether the yardmaster instructed the conductor to bring the minor plaintiff to the yard. Compare JA 67-68 and JA 55-56. Furthermore, the record shows that during his detention the minor plaintiff was treated with care, (e.g., JA 38, 45, 68) and that his needs were ministered to. (E.g., JA 41, 74).

> the offender himself from repeating his transgression; and, second, to deter others from doing likewise. When punitive damages are awarded, they must indeed be large enough to act as an effective deterrent. They should not be any larger." 268 F. Supp. at 201.

It is particularly improper to award punitive damages against a corporation for any reason other than deterrence. To exact retribution from a corporation would place an undue burden on innocent shareholders. See Exemplary Damages in the Law of Torts, 70 Harv. L. Rev. 517 at 526 (1957).

As to deterrence, the hearings indicate that Appellee would have taken disciplinary action had it found that assault and battery occurred. It is, consequently, reasonable to conclude that the railroad does not require further deterrence. Punitive damages accordingly would be low.

Finally, the severe nature of provocation in this case would indicate negligible punitive damages.*/ The record is plain that trainmen live in constant fear of stonings and that numerous injuries, including loss of

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*/ While the ultimate fact as to whether the minor plaintiff actually himself threw stones at the train is in dispute (compare JA 25-29, 64-67 and 31, 34, 46), there is no dispute that someone threw stones (JA 25-29, 64-67), that the stones hit the train (JA 27-28, 65-66), that a window was broken (JA 27-28, 65-66), that one individual throwing stones wore a blue shirt (JA 26, 27), that the minor plaintiff was wearing a blue shirt (JA 16, 26, 27, 29, 45).

vision, have resulted from such incidents.*/ It is settled law that provocation, even where it does not justify an assault and battery, is a factor to be weighed in mitigation of punitive damages and the jury must be so charged. Heil v. Zink, 120 Colo. 481, 210 P.2d 610 (1949); Cooper v. Demby, 122 Ark. 266, 183 S.W. 185 (1916); Gissendanner v. Temples, 232 Ala. 608, 169 So. 231 (1936); Rover v. Belcher, 100 W. Va. 694, 131 S.E. 556 (1926); Barth v. Stewart, 229 Ky. 840, 18 S.W.2d 275 (1929); Patterson v. Henry, 136 N.E.2d 764, Ohio App. (1953). Indeed, some jurisdictions hold that provocation is relevant concerning

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*/ The following is from the deposition of C. G. Stallwitz, a railroad policeman for the Pennsylvania Railroad Company, p. 119:

> "Q. Do you recall any situations, either at or shortly before this particular incident, in which any of the railroad employees were injured as a result of stone throwing?
>
> "A. Yes, sir. I don't know how long before this, sir, but a fireman on one of our freight trains was struck in either the left or right eye and he has lost the sight of his eye, and then I guess about two years prior to that -- this is further in Washington -- a train came out of a tunnel and the engineer was struck in the eye with a piece of concrete and he lost his eye."

See also, JA 34-35, 70.

mitigation of compensatory damages, Jackson v. Old Colony St. R. Co., 206 Mass. 477, 92 N.E. 725 (1910); Bascom v. Hoffman, 199 Iowa 941, 203 N.W. 273 (1925); Mohler v. Owens, 352 S.W.2d 855 (Tex. Civ. App. (1962)); Arnold v. Wiley, 39 Tenn. App. 391, 284 S.W.2d 296 (1955), especially in relation to mitigation of damages for mental suffering. Ulrich v. Schwarz, 199 Wisc. 24, 225 N.W. 195 (1929). A determination that mitigation of damages would result due to the serious provocation in this case would not have been an abuse of discretion. Indeed, it would have been a wise judgment as to the applicability of a well-founded principle of law.

Were a verdict in excess of $10,000 awarded for punitive damages (or compensatory damages, or both) in this case, it is plain that remittitur would be in order. Afro-American Publishing Co. v. Jaffee, 125 U.S. App. D.C. 70, 366 F.2d 649 (1966); Collins v. Brown, supra.

II. Appellants' Suggested Standard For The Certification Determination Is Unsuitable

Appellants have suggested that certification should be ordered only if a verdict in excess of $10,000 "would be so excessive as to warrant judgment n.o.v, a new trial or a remittitur." (Appellants' Brief, p. 13). But this suggested test is in conflict with the language

of the statute and the decided cases, and is confusing and unworkable.

The statute and the Gray case, supra, read together clearly indicate that the proper course in a certification determination is for the District Judge to look at the uncontradicted facts in the record and to render his best judgment as to whether a judgment in excess of $10,000 would be justified. This is a clear, simple standard easily applied by the judge on the basis of his experience and knowledge of the law. There is no foundation in the statute or the cases for applying the standards for judgment notwithstanding the verdict, new trial, or even remittitur.

Moreover, Appellants' suggestions are quite confusing for several reasons.

A judgment n.o.v. is an awkward vehicle for correcting an excessive verdict. Judgment n.o.v. (or directed verdict) is only proper where there is no substantial evidence to support a verdict against the moving party. If this is the case, judgment n.o.v. must be granted as a matter of law; the judge has no discretion in the matter. E.g., Baltimore & Ohio R. Co. v. Postom, 85 U.S. App. D.C. 207, 177 F.2d 53 (1949). The function of judgment n.o.v. is to overturn the whole verdict,

not to alter an award of excessive damages.*/ New trial and remittitur are a judge's tools to correct an excessive verdict.

Furthermore, the standards for judgment n.o.v., new trial and remittitur are quite different. As noted above, judgment n.o.v. is granted only where there is no substantial evidence to support the verdict. The judge's function is not to weigh the evidence; he must consider only the evidence favorable to the party opposing the motion. A court, however, has wider discretion in granting a new trial.**/ New trial can be ordered where the verdict is contrary to the clear weight of the evidence. A new trial is also appropriate where the damages are grossly

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*/ No case has been found where judgment n.o.v. was used to overturn a verdict because it was deemed excessive. Indeed, if there were at least some evidence supporting a verdict on the merits, the use of judgment n.o.v. to throw out an excessive award would violate the Seventh Amendment. Compare Prochot v. Drew, 283 F.2d 904 (7th Cir. 1960).

**/ The distinctions between judgment n.o.v. and new trial are well characterized in Garrison v. United States, 62 F.2d 41 (4th Cir. 1932), a decision by Judge Parker. For a case involving excessive damages where the trial judge's denial of a new trial was vacated on the grounds that he improperly used the standards for judgment n.o.v. in his determination, see Williams v. Nichols, 266 F.2d 389 (4th Cir. 1959).

excessive, where as numerous cases have declared, the verdict is "so exorbitant as to shock the conscience of the Court." Graling v. Reilly, 214 F. Supp. 234, 235 (D.C. D.C. 1963) per Judge Holtzoff. If an excessive award is due to passion, prejudice or misconduct which affects the entire verdict, a new trial is often the only suitable remedy and remittitur will not suffice. E.g., Ford Motor Co. v. Mahone, 205 F.2d 267 (4th Cir. 1953) and cases cited therein. Remittitur, however, is often offered in lieu of new trial unless the verdict is so exorbitant that passion, prejudice or misconduct is indicated. E.g., Afro-American Publishing Co. v. Jaffee, supra; Collins v. Brown, supra.

To apply to certification proceedings the standards applicable in judgments n.o.v. or new trials would be unnecessarily stringent. It would impose standards stricter than occasioned by the wording of the certification statute. It would make certification extremely difficult thereby defeating the Congressional purpose of lightening the District Court's case load. (See Appellants' Brief, p. 7). If, for example, all reasonable inferences are granted the party opposing the motion, as in judgment n.o.v., certification would become rare. Moreover, to say that a judge must grant all inferences to the plaintiffs

denigrates the broad discretion this Court has declared a District Judge has.*/

Furthermore, both the new trial and remittitur determinations often involve a weighing of the evidence. The Gray case, supra, expressly declares such weighing of the evidence to be improper in certification proceedings.

If the standards of remittitur are applied, it is hard to see how the Appellants are helped. In Afro-American Publishing Co. v. Jaffee, supra, this Court, concerning remittitur, said:

> " . . . . The court may set aside an award of punitive damages deemed to be excessive or against the weight of the evidence, or larger in amount that the court thinks it justly ought to be. . . . " 125 U.S. App. D.C. at 83. (Emphasis added).

This standard, especially the emphasized portion, seems no stricter than the standard incorporated in the certification statute.**/

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*/ Appellants do not contend that the standards for certification should be those for determining generally whether the Federal jurisdiction amount is met (Appellants Brief, p. 12). The assumptions given the plaintiff in the latter circumstance are so great that certification almost never would be allowable if this were the case.

**/ It should also be noted that the remittitur power is restricted by the Seventh Amendment. Too great a reduction would violate the Seventh Amendment right to jury trial. See the discussion in 3 Barron and Holtzoff (Wright ed.) 376. But there is no Seventh Amendment problem concerning

(Footnote continued)

III. Certification To The Court Of General Sessions On The Day Of Trial Was Not An Abuse Of Discretion

The certification statute declares that certification is proper "at or subsequent to any pretrial hearing but prior to trial." The statute, consequently, authorizes certification at any time before the trial. In this case trial had not begun; certification, therefore, was appropriate. The Gray case, supra, in the quoted passage, recognizes that discovery often will be completed, and, consequently, trial imminent, when the certification order is made. Furthermore, the initial request for certification was made to the Pretrial Examiner, Mr. Finn, on February 15, 1968. The Examiner declined to rule on this motion declaring that the matter should be reserved for the Trial Judge.

Appellants contend that the District Court should have considered that additional delay in the Court of General Sessions would result. They contend that no

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(Footnote continued)

certification; jury trial is, of course, available in the Court of General Sessions. There is, therefore, a stricture on the remittitur power not relevant to the certification procedure.

Furthermore, judgment n.o.v., new trial and remittitur operate to reverse or limit a verdict. A certification order in no way limits the amount that the jury in the Court of General Sessions can award. D.C. Code, Section 11-962.

acceleration is available in that Court, and that trial would not occur for two years. (Appellants' Brief, p. 15, JA 78-79.)

Appellants, however, overlook the fact that the certification statute guarantees a prompt trial in the Court of General Sessions. The statute says that after certification the Court of General Sessions "[p]romptly . . . shall call the case for trial." The remedy for delay in the Court of General Sessions, therefore, is a motion in that Court requesting the statutory right of prompt trial. The District Court should not forego the responsibility placed upon it by the statute to transfer a case in appropriate circumstances to ameliorate a situation which exists because the Court of General Sessions is not complying with a statutory mandate.*/

Furthermore, any delay which will now result is the fault of the Appellants. Appellants have improperly brought a case with an outlandish claim, $1,151,500 (JA 5-6) in the District Court. Had this case initially been brought in the Court of General Sessions where it belongs (see D.C. Code, Sections 11-521, 11-961 (1967)), trial would be over or at least imminently pending. Some delay

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*/ Appellee will consent to a motion for a prompt trial in the Court of General Sessions.

may now result as a result of the certification order, but the District Court should not abdicate its responsibility to certify because Appellants have made the quite obvious error of bringing their action in the wrong forum. There is no abuse of discretion here.

IV. Appellants Had Opportunity For A Full Discussion Concerning Certification In The Chambers Of The District Judge

Appellants contend that the failure of the District Judge to grant an oral argument as requested by their Motion for Reconsideration was an abuse of discretion. However, in chambers on the day of trial (April 2, 1968), the Trial Judge conducted a full discussion on the questions of damages (including settlement proposals) and certification. Appellants' attorneys were afforded every opportunity to present all their arguments in opposition to certification. The District Judge could well have believed that further argument would be redundant. In any event, there is nothing in the certification statute which requires that oral argument be granted. The denial of additional oral argument was not an abuse of discretion.

Respectfully submitted,

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